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The law of salvage, as administered in th



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# LAW OF SALVAGE,

AS ADMINISTERED IN

THE HIGH COURT OF ADMIRALTY  
AND THE COUNTY COURTS;

WITH THE

PRINCIPAL AUTHORITIES, ENGLISH AND AMERICAN,  
BROUGHT DOWN TO THE PRESENT TIME;

AND AN

## APPENDIX,

CONTAINING STATUTES, FORMS, TABLE OF FEES,  
ETC.

BY

EDWYN JONES, Esq.,  
*—*  
OF GRAY'S INN, BARRISTER-AT-LAW.

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## P R E F A C E.

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I HAVE endeavoured in the following pages to place before the Profession the principles of the Law of Maritime Salvage, with a sketch of the proceedings in a salvage suit in the High Court of Admiralty and in the County Courts.

The close resemblance that exists between the law of England and that of the United States upon this subject has induced me, by a frequent reference throughout the work to American authorities, to aim at making the book equally useful to the American as to the English Lawyer.

In the Appendix are collected those portions of the Merchant Shipping and other Acts which bear upon Salvage, with such of the Forms of the Admiralty Court and County Courts as are likely to be found useful.

EDWYN JONES.

8, KING'S BENCH WALK, TEMPLE,  
*September, 1870.*



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# THE LAW OF SALVAGE.

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## CHAPTER I.

### NATURE OF THE SERVICE, AND IN WHAT CASES SALVAGE REMUNERATION IS PAYABLE.

THE word salvage is generally used to express both the property saved and the remuneration payable to those who have rescued it. In the latter sense, and the only one in which it has to be considered here, it may be shortly described as an allowance made for saving a ship or goods or both from the damages of the seas, fire, pirates, or enemies (*a*).

CHAP. I.

It may be laid down as a general rule, subject to certain exceptions which will be presently noticed, that the plaintiffs in a salvage suit will be required to establish:

- (1.) The fact that the vessel proceeded against was in danger or distress;
- (2). That the salvors rendered her assistance; and
- (3). That their efforts were successful.

(*a*) Park on Insurance, 7th ed. p. 214.

## CHAP. I.

*Distress of Vessel.*

Distress or  
peril an  
essential  
ingredient.

Distress or peril of some kind to the vessel receiving assistance is obviously a necessary ingredient in a salvage service (*b*); but once a distress or peril which elevates the services performed to the dignity of salvage services is shown to have existed, its extent is a matter which, however important its bearing may be upon the amount of remuneration, does not affect the nature of the service (*c*).

Extent of  
distress.

"According to the principles which are recognized in this Court in questions of this description," says

(*b*) See *The Mary*, 1 W. Rob. 448; *The Upnor*, 2 Hagg. 3; *The Persia*, 1 Spinks, 166; *The Traveller*, 3 Hagg. 371; *The Giacomo*, Id. 344. And see the American case of *The Anastasia*, 1 Bened. Adm. 166. In that case the plaintiff, who was a passenger on board an Italian vessel bound to New York, alleged that the vessel having met with cold and adverse winds, the captain, on the twenty-third day, when the provisions and water were getting short, although the vessel was then within thirty miles of Liverpool, Nova Scotia, announced his intention of putting back for Bermuda, the port from which he sailed, and that therupon the plaintiff took charge of the vessel and carried her into Liverpool, and the plaintiff stated it to be his belief that if this had not been done the vessel would have been lost. It was held that no salvage was due, *Benedict*, J., observing, "The vessel had suffered no injury from stress of weather, the master and crew were in good health, sufficient in number for the ordinary crew of such a vessel, and although their method of navigation would doubtless be far from satisfactory to most American seamen, they were competent, after their fashion, and in their own time, to complete the voyage. It is therefore not a case where the extraordinary remedy which the libellant claims to have resorted to was necessary for the salvation of the vessel." See also *The Elvira*, Gilpin, 60—67.

(*c*) *The Charlotte*, 3 W. Rob. 71. See also *Marvin*, 108; *The Reward*, 1 W. Rob. 174; *The Westminster*, Id. 229; *The Wilhelmine*, 1 Notes of Cases, 376; *The Eugenie*, 3 Id. 430; *The Harbinger*, 16 Jurist, 729; and the following American cases:—*Talbot v. Seeman*, 1 Cranch, 1; *The Versailles*, 1 *Curtis*, 353; *The Brig Alphonso*, Id. 378; *The Independence*, 2 Id. 350.

Dr. Lushington, "all services rendered at sea to a vessel in distress are salvage services. It is not necessary, I conceive, that the distress should be actual or immediate, or that the danger should be imminent and absolute; it will be sufficient if, at the time the assistance is rendered, the vessel has encountered any damage or misfortune which might possibly expose her to destruction if the services were not rendered" (*d*).

In another case (*e*), where the vessel proceeded against being on a dangerous coast, in unsettled weather, with insufficient ground-tackle, and her windlass and hawsepipe disabled, was towed into port, the same learned judge held the service to be one of salvage, observing, "The ship was certainly not in any immediate danger, but, on the other hand, she was on a most perilous coast, the weather was unsettled, and if a gale had set on to the shore, must have been in considerable danger from the want of sufficient ground-tackle, and the disabled condition of her hawsepipe and windlass."

Even though a vessel has sustained no real damage, yet if she is in a position of reasonable apprehension of actual danger, assistance rendered to her under such circumstances will be of the nature of a salvage service (*f*). Apprehension of danger sufficient.

(*d*) *The Charlotte*, 3 W. Rob. 71.

(*e*) *The Albion*, Lush. 282. See also "Salvage by Tugs," post.

(*f*) "It certainly is a mistake as to the law of salvage to suppose that in order to constitute a salvage service a vessel must be in actual danger at the time when the services are rendered to her. The danger may be probable or imminent, which may warrant the Court, according to the varying circumstances of each case, in awarding a salvage remuneration."

## CHAP. I.

Vessel's position best evidence of peril.

The degree of peril from which a vessel is rescued is shown less by the opinion of witnesses, whose judgments are often warped by interest, or by an *esprit de localité*, than by the facts of the case, such as the vessel's position, the state of the tide, course and strength of the winds, and the knowledge or ignorance of the dangers of the locality on the part of those in charge (*g*); and where the crew of the vessel proceeded against receives strange hands on board, keeps them there, and takes the benefit of their services, that fact will be some evidence of the vessel being in distress (*h*).

Risk to the  
salvors not  
essential.

Risk to the salvors may be said to be mainly of importance as affecting their remuneration. It necessarily enhances the merit of the services they render, and entitles them to a higher reward than they would otherwise receive; but it is not a necessary element in salvage (*i*).

### *The assistance rendered.*

Actual assistance must have been rendered.

It is absolutely essential that the salvors should have rendered actual assistance to the vessel in distress, and however great may have been the peril to which the property was exposed, if it was not in fact saved by their instrumentality, no salvage can be

Per Sir Robert Phillimore, *The Aztecs*, 21 L. T. N. S. 797. See also *The Raikes*, 1 Hagg. 246; *The Phantom*, L. R. 1 Ad. 58; and see the American case *The Joseph C. Griggs*, 1 Bened. Adm. 80.

(*g*) Marvin, 109, citing the American cases, *The Pearl Dee*, 5 A.R. 232; *The Elvira*, Gilpin, 60.

(*h*) *The Bomarsund*, Lush. 77.

(*i*) Judgment of Dr. Lushington, *The Pericles*, B. & L. 80, 81. See also *The Bomarsund*, Lush. 77; *The Norden*, 1 Spinks, 185; *The Burns* (Irish), 24 L. T. N. S. 232.

allowed, however benevolent may have been their intentions or heroic their conduct (*k*). CHAP. I.

The mere fact of a vessel in distress having been ultimately saved, does not of itself entitle those who go out for the purpose of rendering assistance, to salvage remuneration. They must prove that they rendered actual assistance which contributed, or might have contributed, to save the property. "In all these cases," observes Dr. Lushington, "the first consideration is whether any service has actually been rendered by the party who claims the reward. If any salvage service has been rendered, it may be that persons who have exerted themselves to accomplish the service, though they were not so fortunate as to come up in time, may be let in collaterally to a share, but I am not aware of any case in which, however meritorious the exertion, or great the risk, the Court has taken upon itself to award any remuneration, unless actual assistance was conferred upon the party proceeded against. It is not a question whether at any time there was danger or not; it is not a question whether the salvors risked their property and their lives ; but the foundation of the jurisdiction and authority of the Court is, service actually rendered (*l*)."  
Upon this principle, it was held in a case where the crew of a lugger went out at considerable risk, and in severe weather, for the purpose of assisting a vessel which was in a dangerous situation near the Halesborough Sand, off

(*k*) *The Zephyrus*, 1 W. Rob. 329, 330. See also *The Atlas*, 1 Lush. 518, 521 ; *The Ranger*, 9 Jurist, 119 ; *The Edward Hawkins*, 1 Lush. 515, 516 ; *The Undaunted*, Id. 90—92 ; *The Chetah*, 39 L. J. Ad. 4 ; Marvin, 110.

(*l*) *The Ranger*, 3 Notes of Cases, 589—590.

CHAP. I. the coast of Norfolk, and had even actually touched the sand, but had got free from it before the lugger approached her, that the alleged salvors, notwithstanding the risk they encountered, were entitled to no salvage remuneration (*m*).

American decisions.

Some of the decisions of the American Courts have been governed by the same principle. Thus, in the case of the brig *Dodge Healy* (*n*), where a vessel was floating down the Delaware Bay, imbedded in a field of ice, and was temporarily deserted by her crew, who feared she would strike upon certain shoals, and be overwhelmed by the ice, and the plaintiffs boarded her and claimed salvage, on the pretence that they had cut away the ice, but it was shown that the vessel avoided the shoal simply by drifting in another direction, without the agency of the plaintiffs, it was held that the vessel had not been saved by their exertions, and that they were consequently not entitled to salvage (*o*).

### Success.

The salvage service must have been successful.

Where salvors' services are

It may as a general rule be stated, that success is the main ground upon which a claim for salvage must rest (*p*). The reward is for benefit actually conferred in the preservation of property, and not for meritorious services alone (*q*). If, however, a vessel in distress accepts the services of strange

(*m*) *The Ranger* (*ubi supra*). See also *The Chetah*, 38 L. J. Ad. 4.

(*n*) 4 Wash. 651.

(*o*) See also *The Pontiac*, 1 Newberry, Ad. Rep. 130; and *The Alabamian*, 2 A. R. 254.

(*p*) *The Lockwoods*, 9 Jurist, 1017.

(*q*) *The India*, 1 W. Rob. 406.

hands, such services are in the nature of salvage, even although the work done may be of no great difficulty or importance (*r*); and if the salvors, instead of being mere volunteers, are actually engaged by the ship in distress, they are entitled to be paid for the efforts they make, notwithstanding their labours may prove of no benefit. Thus, where a vessel which had in a gale of wind parted both her anchors, requested a steamer to proceed to the nearest port and bring off an anchor and cable, and the steamer engaged two luggers for this purpose, which, however, did not reach the vessel before she got to a place of safety, it was held that the luggers as well as the steamer were entitled to salvage (*s*). CHAP. I.  
accepted  
they are  
entitled to  
be paid.  
So where  
the salvors  
are not  
volunteers.

And where a vessel, after having sustained damage from a collision, which carried away her mizen-mast, mizen-boom, main topmast, and main topsail-yard, and smashed her wheel, lay at anchor in the Swin, the master having attempted without success to put into port for repairs; the master then entered into an agreement with the crew of a lugger to take the vessel into Harwich Harbour, and place her in a proper berth for £30; the salvors made every possible effort to fulfil their contract, but in consequence of a sudden change in the wind, it became impossible for them to reach Harwich, and they took the vessel back to an anchorage not far from where they originally found her, and remained on board during that

(*r*) *The Bomarsund*, Lush. 77. As to the evidence necessary to prove a request for assistance, see the judgment of Lord Kingsdown, *The Annapolis*, Lush. 355, 375.

(*s*) *The Undaunted*, Lush. 90. See also *The Prince of Wales*, 6 Notes of Cases, 39; *The E. U., The Aztecs*, 21 L. T. N. S. 797; 1 Spinks, 63.

CHAP. I. night, and next morning assisted the crew in heaving up the anchor. The weather subsequently moderating, the vessel was navigated up to Gravesend by her own crew, without further assistance from the salvors. A suit for salvage having been brought, it was contended on behalf of the owner of the vessel, that no salvage service was performed, and that the agreement not having been fulfilled, the salvors were disentitled to any remuneration. It was held, however, by the Court of Admiralty, on appeal from the County Court, that the salvors having been engaged, and having performed their engagement as far as it was possible to perform it, were entitled to be remunerated, and the Court awarded them £40, with costs.

Lying by.

If a vessel in a gale of wind hail a steamer to lie by her to take her in tow, if required, and the steamer do so, even should the ship ride out the gale safely without the assistance of the steamer, the latter would nevertheless be entitled to salvage (*t*).

American decisions.

Upon the same principle, in the Ameriean case, *The Pontiac* (*u*), salvage was decreed to persons who had been actually engaged to render services which did not in the result contribute to the safety of the vessel. In that case the steamboat *Pontiac* was imbedded in a gorge of iee, in the Ohio river, and in a condition of great peril, and the salvor, at the request of the master and owner, both of whom, with all the passengers, and many of the officers and crew, left the vessel, took charge of her in place of the master,

(*t*) Judgment of Dr. Lushington, *The Undaunted*, *ubi supra*. And see the American cases, *The Ship Canada*, Bee, 90; *The Underwriter*, 4 Blatch. C. C. 94; *The J. G. Paint*, 2 Bened. 174.

(*u*) 1 Newberry, 130.

and was enjoined to save her if possible. The vessel was finally saved by the providential breaking-up of the ice. It was held that the fact that the exertions of the salvor did not save the steamer, she being finally saved by the particular manner in which the ice broke up, did not deprive him of salvage reward (*x*).

CHAP. I.

If part of a salvage service is performed by one set of salvors, and the salvage is afterwards completed by others, the first set are entitled to reward *pro tanto* for the services which they actually render (*y*), and this even although the part they took, standing by itself, would not, in fact, have effected the salvage (*z*). Thus, where the crews of a lifeboat and lugger made great and meritorious exertions to save a ship and cargo, but were at length compelled to abandon her, and she was afterwards found and saved by a steamer, the first salvors were, under the circumstances, held to be entitled to salvage (*a*). And where a vessel got on the rocks off Folkestone, and received assistance from some small boats which were unable to get her off, and a tug-steamer also tried in vain, and a large passenger steamer towed her off for a few minutes, when the hawser broke, and she went ashore and became a wreck, but her cargo, valued at a large amount, was saved, it was held that the boats' crews, as well as the steamers, were entitled to participate in the salvage awarded (*b*).

When  
salvors  
begin a ser-  
vice which  
others com-  
plete.

(*x*) See also *The S. W. Downs*, 1 Newberry, 458.

(*y*) *The Samuel*, 15 Jur. 407; *The Undaunted*, 1 Lush. 90.

(*z*) Judgment of Sir John Coleridge, *The Atlas*, Lush. 518 – 527. See also *The Jonge Bastiaan*, 5 C. Robinson, 323.

(*a*) *The E. U.*, 1 Spinks, 63. See also *The Genessee*, 12 Jur. 401; *The Rosalind* (Irish case), 12 L. T. N. S. 553.

(*b*) *The Santipore*, 1 Spinks, 231. See also *The Magdalen*,

CHAP. I.      If, however, the first set of salvors abandon the enterprise, *cum animo non revertendi*, before its successful completion, they will have no legal claim to salvage; and if the abandonment is voluntarily made without any advantage being taken of their necessities by a second set, such second set may intervene and save the property, and entitle themselves to the reward to the exclusion of the first, although they afterwards return and claim to re-engage in the service (*c*).

### *Instances of Salvage Service.*

Transhipment.      The Court of Admiralty looks with jealousy on salvage by transhipment, as leading to deception on owners and underwriters (*d*), and will refuse to regard mere transhipment of cargo by itself as a salvage-service; but if the cargo be in any danger at the time, then the service assumes a salvage character, and those rendering it are entitled to be rewarded as salvors (*e*).

Advice.      It is doubtful whether the mere giving of advice or information as to locality, even to a foreign vessel, especially if the vessel proceeded against was in no actual distress at the time, or required only pilotage assistance, will entitle the person giving it to salvage

31 L. J. Ad. 22; *The Coromandel*, Swa. 205; *The Atlas*, Lush. 518.

(*c*) *The India*, 1 W. Rob. 406. See also Marvin, 142, and the American cases, *Schooner John Wurts*, 1 Olcott, R. 462; *The Henry Eubank*, 1 Sum. 400.

(*d*) *The Hope*, 3 Hagg. 423, 424.

(*e*) *The Westminster*, 1 W. Rob. 229; *The Columbia*, 3 Hagg. 428. See also *The Purissima Concepcion*, 3 W. Rob. 181; and *The Cargo Ex Honor*, L. R. 1 Ad. 87. .

reward (*f*). If, however, the advice is accompanied by enterprise or risk on the part of those giving it, the service will be held to be one of salvage. Thus, where a crew of salvors, whilst cruising outside the cross sand between Caistor and Yarmouth, on the look-out for vessels requiring pilots, observed a vessel under all sail going before the wind, and steering for the cross sand, the wind at the time blowing strong from the east, and a considerable sea on. They bore down upon the vessel, signalling her as they approached, to warn her of her danger, but notwithstanding she ran upon the sand, and hoisted a signal of distress. The salvors then came up and lay off the edge of the sand, and got out their boat, but as the sea was breaking on the sand so as to render it dangerous to attempt going alongside the brig, they hailed the brig to haul in her port braces and to starboard her helm. This advice was shortly afterwards complied with, and the brig came off the sand, upon which she had been about an hour, and then hove-to for the salvors' boat to come alongside. The salvors boarded with difficulty, and in doing so stove in their boat. They found the vessel making water, and gave the master instructions to steer so as to keep clear of the sand. They offered to take the vessel into Harwich, but the master refused any further assistance, and they then left. Upon these

CHAP. I.  
Advice accom-  
panied  
by exer-  
tions.

(*f*) *The Little Joe*, Lush. 88; *The Vrouw Margaretha*, 4 C. Rohinson, 103. See, however, the American case, *The American Iron Co. v. Johnson*, 1 Blatchford & H. 30, where Judge Betts stated it as his opinion, that if a salvor were to give the master of a vessel warning of a reef upon which he was running, and if the master in consequence should change his course and avoid the reef, that the warning would constitute a salvage service.

## CHAP. I.

facts the Court held that the advice given by the salvors contributed to save the vessel, and awarded them salvage remuneration (*h*).

Effect of master's ignorance of locality.

The ignorance of the master in such a case will not, under ordinary circumstances, tend to augment a service where simple pilotage only was required, into one of salvage; but under other circumstances, ignorance of locality may be an important matter (*i*), because, as Dr. Lushington observes, when the question is—what would be the probable fate of a vessel so circumstanced if compelled to keep at sea? the entire ignorance of the parties adds to the natural danger of the situation in which she is placed (*k*).

Communicating with salvors.

Persons who communicate to a vessel which subsequently renders salvage services, the condition of the vessel in distress, and thus lead to her being saved, are to be regarded as salvors. Thus, where the master and crew of a fishing boat, at some risk and danger, boarded a vessel in distress and conveyed a message to a steamer, which subsequently went out to her assistance, they were held to be entitled to salvage (*l*). And where a messenger travelled a distance of twelve miles for the purpose of procuring assistance for a vessel in distress, he was decreed salvage remuneration (*m*).

Salvage in case of collision.

If one vessel save another from an impending

(*h*) *The Eliza*, Lush. 536.

(*i*) *The Cumberland*, 9 Jur. 191, 192, n.

(*k*) *Ibid.*

(*l*) *The Ocean*, 2 W. Rob. 91. See also *The Carrier Pigeon*, 4 Irish Jurist, N. S. 99; and see the American case, *Ship Arctic*, Bee, 232.

(*m*) *The Elizabeth Bibby*, 3 Irish Jurist, 257.

collision, she will be entitled to salvage (*n*). But where a collision happens between two vessels, and both are to blame, the crew of one vessel cannot claim salvage for rescuing part of the cargo on board the other (*o*).

If, however, those rendering salvage services after a collision are proved to have been the innocent parties, they are entitled to claim as salvors, notwithstanding the 33rd sec. of 25 & 26 Vic. c. 63, which imposes upon vessels coming into collision the obligation of rendering mutual assistance. Thus, where a vessel, the *Queen*, came into collision with the *Hannibal*, a vessel in tow of a tng, the *Retriever*, and the vessel held to blame (the *Queen*), being in a position of danger, was towed by the *Retriever* into port, the latter vessel was awarded salvage, the Court holding that the rendering of salvage services under the circumstances had not been taken out of the category of a voluntary service, and become a mere discharge of a positive duty cast upon the salvor by the statute, and for the neglect of which he would have been punishable (*p*). The Court, however, is indisposed to encourage salvage suits which are engrafted upon collision, especially where the services rendered are small (*q*).

(*n*) *The Saratoga*, Lush. 318. See also *The Annapolis*, Id. 355.

(*o*) *The Cargo ex Capella*, L. R. 1 Ad. 356.

(*p*) *The Hannibal* and *The Queen*, L. R. 2 Adm. 53. See *The Sappho*, Swa. 242.

(*q*) Judgment of Dr. Lushington, *The Sappho*, *ubi supra*. See also *The H. M. Hayes*, Lush. 355, where a vessel whilst at anchor was in danger of being run into by another vessel that had gone adrift, and a steam tug was made fast to the latter vessel, and so prevented the collision, it was held that the

## CHAP. I.

Supplying  
master and  
men.

The supplying men to a ship that is shorthanded, or a master to a vessel whose master has died or is sick, is a service in the nature of salvage (*r*). Thus, where the crew of the *Roe*, whilst on the high seas, having been much reduced by death and sickness, another vessel, the *Abdalla*, supplied the deficiency by two from among her own crew, it was held that not only these men, but the rest of the crew of the *Abdalla* were entitled to salvage (*s*). And where the commander of H. M. ship *Cygnets*, having met with a merchant vessel on the coast of Africa, the master of which and one of the crew were sick, and the mate incompetent to navigate her, removed the master and sick seamen on board his own ship, and put his gunner and three of his own men on board, accompanying her in his own vessel and occasionally taking her in tow, and the sailing master of the *Cygnets* subsequently took charge of the vessel and brought her to England, it was held that the commander was entitled to claim salvage on behalf of himself, his officers, and crew, in respect of such services (*t*).

Instances  
of other  
salvage ser-  
vices.

Saving the lives and property on board a burning ship (*u*); assisting to extinguish the flames in a vessel which has taken fire by spontaneous combustion and towing her into port (*x*); the towing into a place

service was too indirectly connected with the vessel at anchor to sustain a claim for salvage against her.

(*r*) *The Janet Mitchell*, Swa. 111; *The Golondrina*, L. R. 1 Ad. 384.

(*s*) *The Roe*, Swa. 84.

(*t*) *The Charlotte Wylie*, 5 Notes of Cases, 4. See also the American cases, *The Brig Alphonso*, 1 Curtis, C. C. 376; *The Geo. Nicholaus*, 1 Newh. 449.

(*u*) *The Eastern Monarch*, 1 Lush. 81.

(*x*) *The Rosalie*, 1 Spinks, 188.

of safety a vessel lying in dock and in danger of catching fire from surrounding warehouses which were in flames (*y*); the saving the cargo from a vessel driven on shore and wrecked (*z*); the rescuing of a raft of timber floating out to sea (*a*); the bringing into port a derelict vessel (*a*), or part of her cargo (*b*); the furnishing an anchor and chain in boisterous weather to a vessel at sea which had slipped her cable (*c*); the getting a vessel afloat which had driven ashore (*d*); the raising of a sunken vessel by means of apparatus (*e*); the recapture of a

(*y*) *The Tees* and *The Pentucket*, 1 Lush. 505. See also *The Eleonore*, 33 L. J. Ad. 19; *Scanan v. The Erie Ry. Co.*, 2 Bened. 128; *The Circassian*, Id. 171; *The Jack Jewett*, Id. 463.

(*z*) *A Raft of Spars*, 1 Abbott, 485. If there be no public road equally convenient, salvors are authorized to pass and repass, with or without carriages or horses, upon any land adjoining the shore where there is a vessel stranded or in distress, and they may deposit on such lands any articles recovered from the vessel. They are, however, required to do as little damage as possible, and for any damage that may be done the owner has a charge upon the ship, boat, cargo, or articles in respect of which it was occasioned, and may recover the amount in the same way as if it were salvage (\*). If, however, the owner should impede the salvors from passing or repassing, or in depositing the cargo, or should prevent it, when deposited, from remaining a reasonable time until it can be removed into a place of safety, he incurs a penalty of 100*l.* (*†*).

(*a*) *The Atlas*, Lush. 518; *The Coromandel*, Swa. 205; *The Magdalen*, 31 L. J. Ad. 22.

(*b*) *The King v. Property Derelict*, 1 Hagg. 383.

(*c*) *The Undaunted*, Lush. 90; *The Prince of Wales*, 6 Notes of Cases, 39.

(*d*) *The Rajasthan*, Swa. 171; *The Alfen*, Id. 189; *The Himalaya*, Id. 515: and see the American cases, *The J. T. Abbott*, 2 Sprague, 101; *The M. B. Stetson*, 2 Parson's Law of Shipping, 288, n. 2.

(*e*) *The Catherine*, 12 Jurist, 632.

Salvors justified in crossing lands.

\* 17 & 18 Vict. c. 104, s. 446.

† Ibid. s. 447.

CHAP. I. vessel from pirates (*f*), or from insurgent slaves (*g*), or out of the hands of an enemy (*h*); and the rescue and removal into deep water of a vessel which was ashore and in danger of being plundered by savages (*i*), have all been held to be salvage services.

Statutory provision for remuneration to salvors.

It is also to be observed that the Merchant Shipping Act, 1854, has a very comprehensive provision for the remuneration of those who assist vessels in distress. By the 458th section it is enacted, that whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services are rendered by any persons,—

- (1.) In assisting such ship or boat;
- (2.) In saving the lives of the persons belonging to such ship or boat;
- (3.) In saving the cargo or apparel of such ship or boat, or any portion thereof;

And whenever any wreck is saved by any person other than a Receiver within the United Kingdom,

There shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services are rendered, or by whom such

(*f*) *The Mariann*, 3 Hagg. 206. See *The Mary*, 1 W. Rob. 448; *The Calypso*, 2 Hagg. 209.

(*g*) *The Trelawney*, 4 C. Rob. 223. See *The Anne*, 5 C. Rob. 100.

(*h*) *The Beaver*, 3 C. Rob. 292. See also *The Louisa*, 1 Dods. 317; *The Frances and Eliza*, 2 Dods. 115; *The Franklin*, 4 C. Rob. 147; *The Urania*, 5 C. Rob. 147.

(*i*) *The Lady Worsley*, 2 Spinks, 253. But see *The Governor Raffles*, 2 Dods. 14, where it was held that the crew of a ship could not claim salvage for rescuing it from mutineers.

wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck (*k*).

By the same Act, any landowner who sustains damage in consequence of salvors passing over his land, or depositing salvage property upon it, has a charge upon the property for the amount of damage, and may recover it as salvage (*l*). And any person who gives information to the Receiver of Wreck, which leads to the discovery of concealed wreck, is entitled to receive as salvage such sum not exceeding £5 as the Receiver to whom the information is given may allow (*m*).

### *Life Salvage.*

Formerly the Court of Admiralty had no authority to give salvors any reward for the saving of human life in cases where it was not connected with the preservation of property (*n*). To remedy this defect in the law, it was provided by the Merchant Shipping Act, 1854, as already pointed out, that reasonable salvage should be payable to those who rendered assistance in saving the *lives of the persons belonging to any ship or boat* (words which have been held to include passengers as well as seamen) (*o*) stranded, or otherwise in distress, on the

(*k*) 17 & 18 Vict. c. 104, s. 458.

(*l*) Ibid. s. 446.

(*m*) 17 & 18 Vict. c. 104, s. 451. The New Merchant Shipping Code Bill does not propose to make any essential alteration in the above provisions.

(*n*) *The Silver Bullion*, 2 Spinks, 70, 74.

(*o*) *The Fusiliers*, 34 L. J. Ad. 25.

CHEAP. I. shore of any sea or tidal water within the limits of the United Kingdom. These provisions were subsequently extended to salvage of life from any British ship or boat "wheresoever the services may have been rendered, and from any foreign ship or boat where the services have been rendered either wholly or in part in British waters" (p). In cases of life salvage not coming within these provisions, such as the saving of life alone on board the ship of a foreign state on the high seas and out of British jurisdiction, the old law continues to prevail, and the Court of Admiralty has no authority to decree salvage (q).

Priority of life salvage. Life salvage takes priority over all other claims for salvage; and where the vessel is destroyed, or her value insufficient, after payment of expenses, to remunerate the salvors, the Board of Trade is empowered to compensate them out of the Mercantile Marine Fund (r).

The effect of the risk of human life as involving the remuneration of the salvors and the liability of the cargo to bear its proportion of the salvage paid for the rescue of human life, will be found in a subsequent part of the volume under the heads "Amount of Salvage" and "Contribution."

(p) 24 Vict. c. 10, s. 9.

(q) *The Johannes*, 1 Lush. 182. For provisions enabling the Queen by Order in Council to apply the provisions of the Merchant Shipping Act, 1854, to foreign ships in respect of salvage services rendered to them on the high seas, see 25 & 26 Vict. c. 63, ss. 59, 61, 62, 63. By Order in Council of 7th April, 1864, they have been extended to Prussian ships.

(r) S. 459 of 17 & 18 Vict. c. 104. See also *The Coromandel*, Swa. 205; *The Bartley*, Id. 199.

## CHAPTER II.

## WHO MAY CLAIM AS SALVORS.

*The Crew.*

THE crew of a vessel being bound by their contract to do their utmost to save the ship and cargo in case of danger or wreck, it is a general and almost inflexible rule that they are not permitted to assume the character of salvors (*a*). If, however, the contract between the owners and the crew be terminated by the abandonment of the vessel, the crew may become entitled to salvage reward for the services they subsequently render towards the preservation of the ship or cargo (*b*). Thus, where a vessel was, by order of her master, abandoned at sea, and on the next day her crew, who had been put on board a steamer, having fallen in with their ship, volunteered to return to her without the master, and with the assistance of a smack and other boats, brought her into port, they were held entitled to salvage reward (*c*).

CHAR. II.

Crew incapable of being salvors whilst connected with vessel.  
But are on abandonment of vessel.

(*a*) See *The Governor Raffles*, 2 Dods. 14, where the crew of a vessel who subdued a dangerous mutiny and retook their vessel, were held entitled to no salvage reward. See also *The Two Friends*, 1 C. Rob. 271, 278; *The Beaver*, 3 C. Rob. 292.

(*b*) *The Florence*, 16 Jur. 572; *The Warrior*, 1 Lush. 476; *The Neptune*, 1 Hagg. 227—237; *The Vrede*, 30 L. J. Adm. 209.

(*c*) *The Florence*, *ubi supra*. See also the American case, *The Blaireau*, 2 Cranch. 240, where a seaman who had been

## CHAP. II.

What amounts to abandonment.

An abandonment, to operate as a dissolution of the contract, must, however, be *bona fide* and final. In giving judgment in the case of *The Florence* (*d*), Dr. Lushington observes: "First, the abandonment must take place at sea, and not upon the coast, for if a ship be driven upon a coast and becomes a wreck, and the mariners escape to the shore, the contract enures to this extent at least, that if they act as salvors, and successfully, so as to save enough to pay their wages, they will be entitled to them (*e*), though not to salvage; if they do not so exert themselves, their wages are lost. Secondly, the abandonment must be *sine spe revertendi*, for no one would contend that a temporary abandonment, such as frequently

left on board by the master and the rest of the crew, who abandoned their vessel on account of the damage done to it in a collision, and went on board the colliding vessel, it was held that he was discharged from his obligations to the ship, and might become a salvor on an equal footing with other salvors. See also the nearly similar case, *The Triumph*, 1 Sprague, 428, where a seaman left on board a ship under like circumstances, although against his will, was held entitled to salvage; and see *Taylor v. Ship Cato*, 1 Peters, Adm. 48; *Montgomery v. The T. P. Leathers*, 1 Newb. Adm. 421; and *The Holder Borden*, 1 Sprague, 144; and 10 Amer. Law Rep. 193, where a whaler having been wrecked on an uninhabited island, the crew rescued part of the oil from the wreck, placed it on the island, and having built a schooner out of the remnants of the wrecked ship, reached the main land, carrying with them the cables and anchors of the vessel and part of the oil. They were refused salvage for saving the oil, but it was held that the schooner built by them was their property, and that as owners they were entitled to compensation for the transportation. See also *Reed v. Hussey*, Blatchford & H. Adm. 543; *The Down*, Daveis, 121; *The Two Catherines*, 2 Mass. 319; *The John Taylor*, Newb. 341.

(*d*) 16 Jurist, 572.

(*e*) Seamen are now entitled to be paid their wages up to the time of wreck, whether freight be earned or not. 17 & 18 Vict. c. 104, s. 183. No change in the law in this respect is proposed in the new Merchant Shipping Code.

occurs in collisions, from immediate fear, before the state of the ship is known, would vacate the contract (*f*). Thirdly, the abandonment must be *bond fide* for the purpose of saving life. Fourthly, it must be by order of the master, in consequence of danger, by reason of damage to the ship, and the state of the elements. The master is, I conceive, the proper person to form a judgment whether abandonment be absolutely necessary or not. He is the person whom the owners have voluntarily intrusted with the command of their vessel, and the care of the property embarked in it. They must be taken to have deemed him competent to the discharge of the duties committed to him, and especially that he would not, without adequate cause, leave to destruction their property. Again, there cannot be a reasonable doubt, I think, that in all cases of *bond fide* abandonment the crew are justified in obeying the orders of the master (*g*); it must be presumed that he is the most competent judge of the degree of danger, and the last who would quit without a rational belief that there existed that degree of danger to life which rendered the abandonment a duty. I say a duty, for I consider it clearly to be a duty not to sacrifice human life; what the degree of danger is which would justify the master in adopting this measure cannot be defined."

Capture by a belligerent dissolves or suspends the connection between the seamen and their vessel. The men no longer constitute the crew of the vessel, but

Contract  
dissolved on  
capture of  
vessel by  
enemy.

(*f*) See the American cases, *Mesner v. Suffolk Bank*, and *The Star, post*, which were decided on this principle.

(*g*) See *The Warrior, post*.

CHAP. II. become prisoners of war. It is no part of their duty to attempt a rescue, and if they do rescue the vessel from the enemy, they are entitled to salvage (*h*).

Contract dissolved by discharge.

Even if there be no abandonment of the vessel, the seamen's contract may be dissolved by the act of the master in discharging the crew, and they would be entitled to avail themselves of the discharge so as to claim salvage for subsequent services, and their rights in this respect would not be affected by the fact that the master in discharging them was acting contrary to the interests of his owners, so long as they (the men) were not parties to his misconduct (*i*). Thus, where a ship, in calm weather, went by accident on a rocky beach, beat heavily, and in half an hour filled with water, and the master and crew immediately quitted the vessel and went on shore, and the next day the master discharged all the officers and crew, and afterwards, on the same day, some of the crew, at the suggestion of the mate, returned to the ship, and after working for several days, succeeded in saving part of her stores and a considerable amount of cargo before she broke up: it was held that the contract between the shipowners and the seamen was dissolved, not by the abandonment of the ship, but by the discharge given by the master, and that the crew having (as was proved) been guilty of no fraud in accepting their discharge, were entitled to salvage (*k*).

(*h*) *The Two Friends*, 1 C. Rob. 271. See also the American cases, *Phillips v. McCall*, 4 Wash. C. C. 141; *The Harmony*, 1 Peters, 70; *Williams v. Suffolk Ins. Co.*, 3 Sum. 270.

(*i*) *The Warrior*, Lush. 476.

(*k*) *Ibid.*

The American Courts have recognised the principles laid down in the English Court of Admiralty as to the incapacity of a seaman to acquire salvage in respect of services rendered during his connection with the vessel. Thus, where a steamer was so severely injured by a collision at sea as to be deemed in immediate danger of sinking, and the captain, passengers, and crew abandoned her for the safety of their lives, the passengers going on board the colliding vessel, and the master and crew, remaining near the wreck in their boats. They were employed in saving articles found floating, but after a short time, as the steamer, though full of water, did not sink, they went on board again for the purpose of saving, and did save, baggage, money, and other property, to a large amount: it was held, that their services did not exceed the limits of their duty as the crew of the vessel, and that they were not entitled to salvage (*l*). And where, in another case of collision, the master and crew of one of the vessels, fearing that their vessel would sink, went on board the other for safety, and while the vessels were interlocked, a part of the crew returned to their own vessel, and, the vessels having immediately afterwards parted, succeeded in bringing her into port, they were held not to be entitled to salvage (*m*).

The American Courts have, however, qualified the principle above laid down, so as to admit the crew to

CHAP. II

American cases on incapacity of crew to sue for salvage.

(*l*) *Mesner v. Suffolk Bank*, 1 American Law Rep. 249.

(*m*) *The Star*, 14 American Law Rep. 487. See also *Miller v. Kelly*, Abbott's Ad. Rep. 564; *The John Perkins*, 21 American Law Rep. 87; *The Acorn and Speedwell*, Id. 99.

CHAP. II. claim salvage remuneration for services outside the  
vice outside fair and reasonable obligations of their contract.  
duty of sea-  
men.

Thus, in the case of *The Mary Hale* (*n*), the mate and four seamen, at the request of the master, crossed the Gulf Stream from Key Sal, on the Bahama coast, to Key West, a distance of 180 miles, in an open boat, during bad weather, and in much peril of their lives, in order to procure assistance to take off the passengers and crew from the wreck, and to save the cargo. They succeeded in procuring assistance, by means of which the passengers and cargo were saved. It was held by the Court, that these services exceeded the duty they owed to the ship, and entitled them to salvage. In another case (*o*), where part of the crew of a vessel inclosed in a field of ice off the mouth of Boston Harbour, voluntarily remained on board their vessel under circumstances of great peril, and rendered valuable service in rescuing the vessel after the master and the rest of the crew had, for the safety of their lives, abandoned her and gone ashore, and other crews involved in similar peril had done the same thing, it was held, that as the crew might, without any dereliction of duty, have left the vessel, their remaining might be justly considered as an act beyond what was required by the just and fair obligations of their contract, and that for the services they rendered they were entitled to a reward in the nature of salvage, but less in amount than would be allowed to strangers, for they continued to owe service to the ship under their contract, which still subsisted,

(*n*) Reported in Marvin on Wreck and Salvage, p. 161.

(*o*) *The Acorn*, 19 Law Rep. 499, cited in Marvin, p. 162.

although not precisely the service which was rendered (*p*). CHAP. II.

### *Passengers.*

It has been laid down that passengers on board a vessel in distress cannot claim salvage for any assistance they render towards preserving the ship and cargo, it being incumbent upon all on board to assist where there is a common danger (*q*), and that if the passengers of a vessel that has received injury, but is in no immediate danger, remain on board and assist at the pumps until the arrival of the ship in port, they will not be entitled to salvage (*r*). A passenger is not, however, obliged to hazard his own safety in order to save the ship or cargo, and if he voluntarily remains on board, and makes extraordinary exertions on behalf of the ship, he will be entitled to be remunerated as a salvor (*s*); and where a passenger took the command of and brought safely into port a ship that had been abandoned by her crew, he was held to be so entitled (*t*).

In the American case, *The Merimac* (*u*), a number of troops who, whilst being carried (under a contract with their government) on board a steamer, by

(*p*) See also *The Holdef Borden*, 1 Sprague, 144 : 10 American Law Rep. 193. *[Seamens at the crew take]*

(*q*) *The Branston*, 2 Hagg. 3, n.

(*r*) *The Vrede*, 1 Lush. 322.

(*s*) *Ibid.* In this case Dr. Lushington is thus reported :— “Services rendered by passengers must have occurred over and over again, yet, except the cases of *The Branston* and *The Salacia*, there is apparently no precedent on which a claim for salvage by a passenger has been prosecuted in this Court.”

(*t*) *Newman v. Walters*, 3 Bos. & P. 612. See also *The Salacia*, 2 Hagg. 262.

(*u*) 18 L. T. N. S. 92.

CHAP. II. severe and organised efforts under the command of their officers, kept the vessel afloat after she had sprung a leak, until she was brought into a place of safety, were held not to be passengers, but entitled to salvage reward.

In another American case, *The Great Eastern* (*x*), that vessel having disabled her paddle-wheels, and broken her rudder-shaft in a gale, lay in the trough of the sea for about thirty-six hours, during which time the officers of the ship had endeavoured in vain to repair the damage. The claimant, a passenger on board, with the consent of the captain of the ship undertook to put in execution a plan which he had himself devised for steering the ship, superintended the work, and after about twenty-four hours' work succeeded in bringing the vessel out of the trough of the sea, and enabling her to come into port in safety. The Court held this to be a salvage service, and awarded the passenger £3000.

Bailiff.

It is no answer to a claim for salvage that the name of the person rendering the service appeared in a warrant as bailiff for the seizure of the ship and cargo (*y*).

#### *Shipowner.*

Salvage a  
reward for  
personal  
exertions  
only.

The rewarding of meritorious personal exertions being one of the principal grounds upon which the Court of Admiralty gives salvage remuneration, it follows, as a general rule, that no one can sustain a suit for salvage who was not personally engaged in

(*x*) 11 L. T. N. S. 516.

(*y*) *The John Bryant*, 5 Irish Jur. 233. See also the American case, *Le Tigre*, 3 Wash. C. C. 567.

the service which formed the foundation of the claim. Where the claimant is proved to have done no more than send other persons to assist the vessel in distress, the Court will refuse to recognize his right to participate in the sum which it awards (z).

The owner of a vessel whose crew renders salvage assistance, however, stands upon a different footing. Although he may not have been actively engaged in the undertaking, and may have incurred no personal risk whatever, yet he is almost invariably entitled to participate in any salvage that may be awarded, and to sue the assisted vessel for the recovery of his demand. It has been held that where the salving vessel has either been diverted from her proper employment or has experienced a special mischief, occasioning to the owners any inconvenience or loss for which an equitable compensation could be reasonably claimed (a), or where officers or men have left her for the purpose of assisting a vessel that had become shorthanded (b), the owner is entitled to share in the reward; and that even in the absence of any danger, the fact that a vessel has been detained whilst giving assistance to the distressed vessel, is in itself

(z) *The Vine*, 2 Hagg. 1; *The Aquila*, 1 C. Rob. 37. In these cases, the Court rejected the claims of an officer of Coast Guard, who sent a boat and a detachment of his men, but did not assist in person, and of a magistrate, who sent fifteen men, to whom he had administered an oath, to assist a vessel in distress. See also *The Watt*, 2 W. Rob. 70; *The Lively*, 3 Id. 64.

(a) *The Vine*, ubi supra; *The Charlotte*, 3 W. Rob. 68, 72.

(b) *The Janet Mitchell*, Swa. 111; *The Nicolina*, 2 W. Rob. 175. See also as to the right of owners to participate, *The Martin Luther*, Swa. 287; *The Spirit of the Age*, Id. 286; *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454; *The Norden*, 1 Spinks, 185.

CHAP. II. sufficient to support the claim of the owner to a portion of the salvage (*c*).

Hirer of ship  
claiming as  
salvor.

When the underwriters of a vessel and cargo that had been abandoned hired another vessel, and subsequently succeeded in saving the ship and cargo, they were held entitled to sue as salvors, being looked upon as the owners, for the time being, of the hired ship (*d*).

It is difficult to imagine a state of things where salvage assistance is rendered on the high seas, in which the salving vessel has not incurred a risk, disadvantage, or delay sufficient to sustain a salvage claim by the owner; and it also not unfrequently happens, especially in the case of steam ships, that the vessel is the principal salvor (*e*).

Chartered  
vessels.

Where the vessel assisting, and the vessel receiving assistance, belong to the same owner, no salvage remuneration is payable. The rule has been held to apply where the vessel saved, although not the property of the owner of the salving vessel, was chartered by him under a contract which stipulated that he should provide and pay the master and crew (*f*). If, however, the possession of the chartered vessel continued in her owner, and did not pass to the charterer, as has been held to be the case where the contract stipulated that the owner should appoint the master and crew, find ship's stores, and pay crew's wages, salvage will be payable as in other

(*c*) *The Norden, ubi supra*; *The Haidee*, 1 Notes of Cases, 594.

(*d*) *The Pickwick*, 16 Jurist, 669.

(*e*) See further on the subject, title "Apportionment," post.

(*f*) *The Maria Jane*, 14 Jurist, 857. See *The Alfen*, Swa. 189.

cases. The circumstance may, however, affect the CHAP. II. quantum to be awarded (*g*).

### *Associated Vessels.*

Where vessels sail together under an agreement to <sup>Associate</sup> <sub>vessels.</sub> render mutual assistance, no salvage remuneration is payable for any services which one of them may render to the other (*h*). Such an agreement must, however, be clearly established (*i*).

When two British ships meet in distant parts of the world, common and ordinary service is generally expected to be rendered by the one to the other; yet, if the service partake of the true description of salvage, the party rendering it has a right, if he chooses, to sue for salvage remuneration (*k*); and when vessels proceed on the same voyage, leaving port nearly together, and assistance is rendered by one to the other, without deviation from her proper course, the association of the vessels affords no answer to a claim for salvage, although it would affect the

(*g*) *The Collier*, L. R. 1 Ad. 83 ; *The Waterloo*, 2 Dods. 433.

(*h*) *The Zephyr*, 2 Hagg. 43.

(*i*) *The Waterloo*, 2 Dods. 433-436. Lord Stowell, p. 436 : “I confess I think that the claim of being discharged from a liability to salvage, is one which the Court would not be justified in admitting unless the discharge appeared in express terms, and in a contract that by the use of clear and explicit language, should remove all doubt respecting the common understanding of both parties. A clear and general right ought not to be ousted by questionable expressions and violent constructions.” See also *The Margaret*, 2 Hagg. 48 ; *The Swan*, 1 W. Rob. 68, note ; *The Harriot*, 1 W. Rob. 439 ; *The Red Rover*, 3 W. Rob. 150 ; *The Africa*, 1 Spinks, 299 ; *The Gravina*, Pritchard’s Digest, 811 ; and the American case, *The T. P. Leathers*, 1 Newh. 421.

(*k*) Judgment of Dr. Lushington, *The Portia*, 9 Jurist, 167-S.

CHAP. II. amount of remuneration which, in such a case, would not be considerable (*l*).

Part-owner of both vessels claiming as salvor. The fact that a part-owner of the salving vessel has also an interest in the vessel salved, does not disentitle his co-owners to sue for salvage. They must, however, deduct from the value of the entire service the share which would have been due to the part-owner if he could have joined as plaintiff (*m*).

Boat-owner claiming salvage. Where the salvors get to the vessel in distress by means of boats belonging to a person who does not personally assist in the undertaking, the mere circumstance that his boats enabled the salvors to render the required assistance does not entitle the boat-owner to sue as a salvor; and where the crew of a stranded vessel, having taken to their boats, and, in making for the nearest land, fell in with and succeeded in saving a ship that had been abandoned, a claim by the owner for salvage on the ground that the salvors were enabled to reach the vessel solely by means of his boats, sails, and compass, was rejected (*n*). The Court, however, has allowed a person who sent his boats to render salvage service a sum out of the salvage awarded, by way of equitable compensation for the use of the boats (*o*); and it is submitted upon principle, that where boats so engaged are injured or placed in jeopardy during the service, the owner would be entitled to claim as a salvor in respect of the loss or risk which he sustains.

(*l*) Judgment of Dr. Lushington, *The Ganges*, 1 Notes of Cases, 87—90; *The Two Friends*, 8 Jurist, 1011.

(*m*) *The Caroline*, 1 Lush. 334.

(*n*) *The Two Friends*, 2 W. Rob. 349.

(*o*) *The Charlotte*, 3 W. Rob. 68.

*Vessels of Royal Navy.*

CHAP. II.

With respect to salvage services rendered by vessels belonging to the Royal Navy, it is provided by the 484th section of the Merchant Shipping Act, 1854, that "no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores or other articles belonging to Her Majesty supplied in order to effect such services, or for any other expense or loss sustained by Her Majesty by reason of such services" (g).

*Owner of Cargo.*

There does not appear to be any instance in our Courts of a claim by the owners of cargo on board the salving vessel to participate in the salvage awarded. There are a few such cases in the American Reports. In the case of *Bond v. The Brig Cora* (h), the owner of the cargo on board the salving vessel joined in the salvage suit, but the claim was refused, with costs. In an earlier case, *The Blaireau*, decided in 1804 (i), the owners of the cargo on board the salving vessel were awarded a proportion of the

(g) 17 & 18 Vict. c. 104, s. 484. See also *The Rosalie*, 1 Spinks, 188. In lieu of the provisions contained in the above section, it is proposed by the new Merchant Shipping Code, s. 417, to provide that a claim may be allowed for the cost of any stores belonging to Her Majesty supplied to any ship in distress, but that no claim shall be allowed for the risk, loss, or damage of any ship belonging to Her Majesty, or of the appurtenances on board such ship.

(h) Peters, 361. See also *The Nathaniel Hooper*, 3 Sum. 542.

(i) 2 Cranch. 240.

CHAP. II. salvage; but in that case one of the owners consented to the salvage services being performed, and the Court seems to have considered that his acts went so far as to charge himself and his co-owner with the hazards to be encountered by the cargo.

American law.

The American law as to the right of shipowners to sue for salvage, differs in no way from that of this country. There are many instances of such claims, and the decision of Mr. Justice Betts in *Waterbury v. Meyrick* (*l*), affords a valuable illustration of the principle that the shipowner's claim to participate in salvage rests, in all cases, on the risk and damage to which his property is, or may be, exposed. In that case the master of a vessel left his ship at the outward port, and by pledging part of the cargo belonging to his owners and other shippers, hired another vessel, performed a salvage service, and received the salvage remuneration: it was held, that the owners of the vessel to which the master belonged were not entitled to participate in the salvage, their vessel not having been used in the adventure, and that their remedy against the master was by action at common law for his breach of duty.

### *Pilots.*

Pilots cannot claim salvage for services rendered in the course of their employment.

Pilots being bound by the nature of their employment to be always ready to go out to vessels requiring their assistance—unless it be at the risk of their lives—cannot, in the absence of exceptional circumstances, entitle themselves to salvage by what they

(*l*) Blatchford & H. Adm. Rep. 34.

may do in the course of their duty (*m*). They are bound to render their assistance, and can claim no more than the rates of pilotage, which are presumed to be an adequate remuneration for their services (*n*). And by the Merchant Shipping Act, 1854, it is provided that any qualified pilot demanding or receiving, and also any master offering or paying to any pilot any other rate in respect of pilotage services, whether greater or less than the rate for the time being demandable by law, shall, for each offence, incur a penalty of £20 (*o*).

No pilot, however, is bound to go on board a vessel in distress to render pilotage service for mere pilotage reward (*p*). “The Court has always held,” observes Dr. Lushington (*q*), “with regard to pilots, that they are entitled to say, when they get on board vessels which are not seaworthy, and therefore in a state of danger, ‘We do not come in the character of pilots, but also in the character of salvors.’ In such a case they are not entitled to abandon the vessel (*r*), but the Court has uniformly

But pilots assisting a vessel in distress are salvors.

Duty of pilot to remain by

(*m*) *The Rosehaugh*, 1 Spinks, 267; *The General Palmer*, 2 Hagg. 176; *The Joseph Harvey*, 1 C. Rob. 306.

(*n*) *The Elizabeth*, 8 Jur. 365.

(*o*) 17 & 18 Vict. c. 184, s. 358.

(*p*) *The Frederick*, 1 W. Rob. 16; *The Jonge Andries*, Swa. 226—229; *The Galatea*, Id. 349; *The King Oscar*, 6 Notes of Cases, 284. In *The Elizabeth*, 8 Jur. 365, Dr. Lushington observes:—“I have over and over again expressed my opinion that when the service is one of a description not mere pilotage, the parties are to be rewarded for such service as salvors, and not as pilots. There is a very material distinction to be adverted to in these cases, namely, the rates of pilotage have been settled upon the calculation of what will be an adequate reward for ordinary pilot services, and not for other services.”

(*q*) *The Jonge Andries*, Swa. 226—229.

(*r*) See also *The Hebe*, 2 W. Rob. 246; but see, however, *The Frederick*, 1 W. Rob. 16, where Dr. Lushington observes

CHAP. II. given them an additional reward, thinking they are not to be compensated for salvage service by mere pilotage reward.”

Instances  
of salvage  
reward to  
pilots.

Pilots have consequently been held entitled to salvage reward for going out to ships in a leaky condition, and rendering assistance in working the pumps, and in laying out and afterwards slipping or recovering an anchor (*s*), and for boarding in boisterous weather, and bringing into a place of safety a foreign vessel that had sustained damage (*t*).

Vessel out-  
side pilotage  
grounds.

If a vessel in distress or peril, and out at sea beyond the limits of pilotage grounds, should require assistance to conduct her to a place of safety, the service of the pilot in rendering this assistance is not pilotage but salvage (*u*).

Pilot acting  
out of ordi-  
nary em-  
ployment.

If the services rendered by the pilot be out of the ordinary course of his employment, as where he assists in getting off a vessel that had driven upon rocks, he will of course stand upon the same footing as any ordinary salvor (*x*).

that if a pilot under such circumstances “on being told he would receive pilotage only, refused to take charge of a vessel in that condition, he would be subject to no censure, and if he did take charge of her he would be entitled to a salvage remuneration.” In *The Jane Anderson* (3 Irish Jurist, p. 293), it was held that a pilot is not bound to remain on board a ship in distress in any event, and at the peril of his life, and that if he took charge of or remained on board a vessel so circumstanced, he would be entitled to be paid for extraordinary services as a salvor. See also *The Wm. Ward*, 8 Irish Jurist, 336; *The Hercules*, *Ibid.* 412.

(*s*) *The Hebe*, 2 W. Rob. 246.

(*t*) *The King Oscar*, 6 Notes of Cases, 284. See also *The Enterprise*, 2 Hagg. 178, n.; *Newman v. Walters*, 3 Bos. & P. 612–616. But see *The Johannes*, 6 Notes of Cases, 288, where a pilot unsuccessfully attempted to obtain salvage for piloting a foreign vessel.

(*u*) *The Hedwig*, 1 Spinks, 19.

(*x*) *The Persia*, 1 Spinks, 166.

In the event of a dispute as to whether a signal hoisted was for a pilot, or was a signal of distress, CHAP. 11.  
Ambiguous signals. the Court will determine the fact by reference to the state of the vessel at the time (*y*) ; and even if the signal hoisted should have been for a pilot, that does not prevent the services rendered from being in the nature of salvage. The true questions in such a case are—what was the condition of the ship? was she in distress? (*z*) and where the vessel is damaged, and in a certain degree of distress, the Court has uniformly held a signal exhibited under such circumstances to be a signal for assistance, and not for a pilot (*a*).

A service which would be pilotage in the case of a duly licensed pilot, may become salvage when rendered by persons under no obligation to perform it (*b*). The Court recognises the difference that exists between a person possessed of a monopoly, and entitled to charge a given sum, and a person voluntarily performing a duty, whether it be a pilotage or a salvage service : the latter has a right to Pilotage by persons not licensed pilots.

(*y*) *The Hedwig*, 1 Spiuks, 19, 93, n.; *The Dosseitei*, 10 Jur. 865, 866; *The Little Joe*, 1 Lush. 88. See also the American case, *Brig Susan*, 1 Sprague, 499.

(*z*) Judgment of Dr. Lushington, *The Bomarsund*, 1 Lush. 77, 78.

(*a*) Judgment of Dr. Lushington, *The Otto Hermann*, 33 L. J. N. S. Ad. 189, 190. In *The Felix*, 1 Spinks, 23, n., Dr. Lushington is thus reported :—"I have determined to decide these questions in this way. If the vessel is in a damaged state, I shall determine that it is a signal for assistance, because the vessel wants it; but when the vessel is not in a damaged state, and a pilot only is wanted, I shall construe it to be a signal for a pilot. That seems consistent with probability."

(*b*) *The Rosehaugh*, 1 Spinks, 267. See also *The Dygden*, 1 Notes of Cases, 115; *The Eugenie*, 3 Ibid. 430.

CHAP. II. exercise his own judgment as to whether he will go out on the service or not, and may then demand a fair remuneration for whatever he does (*c*).

Where persons volunteer services of this nature, however, they are expected to bring to the task, if not the nautical skill of qualified pilots, at least ordinary skill and ability; and although the Court will look with considerable indulgence upon their efforts when no one else is on the spot capable of rendering more efficient assistance, and theirs is the only aid that can be procured, it will view with disfavour the conduct of incompetent persons who assume the character of salvors when there are other persons present capable of discharging those duties (*d*).

American law as to  
pilots salvors.

In America the laws of most of the States make it part of the duty of a pilot to assist vessels in distress, and in some instances give the rate of extra compensation to be awarded. Such services are, therefore, generally considered as extra pilotage services, and not as salvage (*e*); and the American Courts have in several cases, where salvage would have been awarded to pilots by the English Court of Admiralty, held the service to be mere pilotage. Thus, where the master of a vessel aground, made an agreement with a pilot to get her off for 500 dollars, and take her into port, the Supreme Court of New York refused to enforce

(*c*) Per Dr. Lushington, *The Rosehaugh, ubi supra*. It was formerly held that persons assuming the character and duties of pilots were entitled to be remunerated only as pilots, and not as salvors. See *The Columbus*, 2 Hagg. 178, n.; *The Funchal Baptista*, 3 Ibid. 386, n. That, however, can no longer be regarded as the state of the law.

(*d*) *The Dygden*, 1 Notes of Cases, 115. The 360th, 361st, and 362nd sections of the Merchant Shipping Act, 1854, regulate the employment of unqualified pilots.

(*e*) 2 Parsons on Shipping, 271.

this agreement, on the ground that the pilot was bound to render assistance, and could recover an adequate compensation under the statute (*f*); and in another case (*g*), where a vessel which, whilst going out of harbour in winter, became injured by ice, and nearly filled with water, was saved by a pilot-boat, the service was held to be only pilotage.

In other cases, however, the extra services of pilots have been held to entitle them to salvage reward (*h*).

### *Salvage by Tugs.*

Where a steamer is engaged to render towage service to a vessel, she is bound by her agreement to do all that is necessary to facilitate the safe voyage of the vessel. She is to take the chance of bad weather, which may occasion delay and inconvenience, and for her services in this respect she is entitled only to towage remuneration (*i*).

Tugs generally entitled to towage remuneration only, and take risk of weather.

(*f*) *Callagan v. Hallett*, 1 Caines, 104. See also *Dulany v. Sloop Peragio*, Bee, 212; *Dexter v. Bark Richmond*, 4 Amer. Law Rep. 20.

(*g*) *The Schooner Wave v. Hyer*, 2 Paine, C. C. 131.

(*h*) *Hobart v. Drogan*, 10 Peters, 108; *Lea v. Ship Alexander*, 2 Paine, C. C. 466. In the latter case, where a pilot got a vessel off a shoal, he was held to be entitled to salvage. See also *Hope v. Brig Dido*, Ibid. 243, where services rendered by pilots to a vessel at sea, and without a rudder, were held to be salvage services, on the ground that the vessel was un-navigable. See also *Love v. Hinckley*, 1 Abbott, 436; *Ship Warren*, 12 N. Y. L. Observer, 257; and *The Steamboat T. P. Leathers*, 1 Newberry, Adm. 421, where it was held that the surrender of a steamboat on fire to the care and protection of another steamer, dissolved the contract between the surrendered boat and its pilot, and that the pilot, by important services subsequently rendered beyond the line of his duty, was entitled to claim as one of the salvors.

(*i*) Judgment of Dr. Lushington, *The Galatea*, Swa. 349. See also *The Lady Egidia*, Lush. 513; *The Arthur*, 6 L. T. N. S. 556.

**CHAP. II.** The state of the wind and weather at the time the agreement is entered into is, however, to be taken into consideration in determining the actual nature of the obligation which is undertaken. "I apprehend," says Dr. Lushington (*k*), "that when a master of a vessel contracts with the master of a tug, it is upon the supposition that the wind and weather and the time for performing the service, will be what are ordinary at the time of year, and that the sum contracted for is that which is supposed to be a sufficient remuneration for the ordinary performance of the voyage. . . . If the tug is merely ordinarily delayed in performing the service, it is not to have additional remuneration, but if the delay be unexpected and beyond all contemplation, then it must have something additional" (*l*). If during the towage the weather should become such as to render the completion of the undertaking on the part of the tug impossible, the services which she subsequently renders to the vessel will be in the nature of salvage.

Judgment in  
*The Minnehaha.*

The law upon this subject was most fully discussed in the case of *The Minnehaha*, both in the Court of Admiralty and on appeal, and it was thus laid down in the judgment of the Judicial Committee of the Privy Council (*m*) : "When a steamboat engages to tow a vessel for a certain remuneration from one point to another, she does not warrant that she will be able to do so, and will do so under all circumstances, and at all hazards; but she does engage that she will

Tug's en-  
gagement  
not a war-  
ranty to tow  
to destina-  
tion, but  
engagement  
to use best  
endeavours.

(*k*) *The White Star*, L. R. 1 Ad. 68.

(*l*) See also *The Ellora*, Lush. 550; and *The Galatea*, Swa. 349.

(*m*) Lush. 335—347.

use her best endeavours for that purpose, and will bring to the task competent skill, and such a crew, tackle, and equipments as are reasonably to be expected in a vessel of her class. She may be prevented from fulfilling her contract by a *vis major*, by accidents which were not contemplated, and which may render the fulfilment of her contract impossible, and in such a case, by the general rule of law, she is relieved from her obligations. But she does not become relieved from her obligations because unforeseen difficulties occur in the completion of her task, because the performance of the task is interrupted, or cannot be completed in the mode in which it was originally intended, as by the breaking of the ship's hawser. But if, in the discharge of this task, by sudden violence of winds or waves, or other accidents, the ship in tow is placed in danger, and the towing vessel incurs risks and performs duties which were not within the scope of her original engagement, she is entitled to additional remuneration for additional services, if the ship be saved (o), and

If *vis major*  
renders fur-  
ther per-  
formance  
impossible,  
tug's obliga-  
tion termi-  
nates.

Unforeseen  
danger hap-  
pening to  
ship, tug  
entitled to  
salvage for  
extra ser-  
vices.

(o) See also upon this *The Princess Alice*, 3 W. Rob. 138, where Dr. Lushington (p. 140) observes: "Many circumstances, it is obvious, may arise in the course of such employment, which may convert the service into the character of a salvage service, as, for example, where the ship in tow is disabled in her hull or rigging, or where she is aground, or where the service itself is attended with danger or extraordinary labour to the towing vessel." And see *The William Brandt, Junior*, 2 Notes of Cases, Supp. 67, where the same learned judge is thus reported: "The agreement was for towing only. If in the performance of a salvage (misprint for towage) service, such towing being honestly, fairly, and skilfully performed, it happens from inevitable accident, over which neither party has any control, that an accident occurs to the vessel taken in tow, and essential services are rendered by the vessel agreeing to tow her from one place to another, I am of opinion that the agreement does not cover such a service. I think I should be laying down a very dangerous

CHAP. II. may claim as a salvor instead of being restricted to the sum stipulated to be paid for mere towage. Whether this larger remuneration is to be considered as in addition to or substitution for the price of towage, is of little consequence practically (*p*). The measure of the sum to be allowed as salvage would of course be increased or diminished, according as the price of towage was or was not included in it. In the cases on this subject the towage contract is generally spoken of as superseded by the right to salvage.

"It is not disputed that these are the rules which are acted upon in the Court of Admiralty, and they appear to their lordships to be founded in reason and in public policy, and to be not inconsistent with legal principles. The tug is relieved from the performance of her contract by the impossibility of performing it, but if the performance of it be possible, but in the course of it the ship in her charge is exposed, by unavoidable accident, to dangers which require from the tug services of a different class and bearing a higher rate of payment, it is held to be implied in the contract that she shall be paid at such higher rate. To hold, on the one hand, that a tug having contracted to tow is bound, whatever happens

doctrine, if I were to hold that where a person agrees to perform the simple duty of towing from the Nore to London, if from stress of weather, from an accident happening to the ship, or other circumstances of a like nature, it should so happen that other and different services have to be discharged, the original agreement is binding on the parties." See also *The Galatea*, Swa. 349.

(*p*) The fact, however, that the tug was engaged in the service of the vessel saved, will tend to diminish the *quantum* of the reward for the extraordinary service rendered. See judgment of Dr. Lushington in *The William Brandt, Junior*, 2 Notes of Cases, Supp. 67.

after the contract, though not in the contemplation of the parties, and at all hazards to herself, to take the ship to her destination ; or on the other, that the moment the performance of the contract is interrupted, or its completion in the mode originally intended becomes impossible, the tug is relieved from all further duty, and at liberty to abandon the ship in her charge to her fate, would be alike inconsistent with the public interests (*q*).

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“ The rule, as it is established, guards against both inconveniences, and provides at the same time for the safety of the ship and the just remuneration of the tug. The rule has been long settled ; parties enter into towage contracts on the faith of it, and we should be extremely sorry that any doubt should be supposed to exist upon it. It is said that it has never been brought before us for decision. If so, considering how often the rule has been acted upon, the necessary inference is that it has never been made the subject of appeal, because it has been universally acquiesced in.

“ Whether the circumstances in each particular case are sufficient to turn towage into salvage, must often be a subject of great doubt, as it is in the present case ; but there is one point upon which their lordships can entertain no doubt, and upon which they are surprised that any doubt should have been thrown at the bar. If the danger from which the ship has been rescued is attributable to the fault of the tug—if the tug, whether by wilful misconduct or by negligence, or by want of that reasonable skill

No additional reward where danger caused by misconduct, negligence, or incapacity of tug.

(*q*) See also upon this, *The Edward Hawkins*, 1 Lush. 515, and *The Saratoga*, 1 Lush. 318.

CHAP. II. or equipments which are implied in the towage contract, has occasioned or materially contributed to the danger, we can have no hesitation in stating our opinion, that she can have no claim to salvage. She never can be permitted to profit by her own wrong or default. When it is remembered how much in all cases--how entirely in many cases—a ship in tow is at the mercy of the tug ; how easily, with the knowledge which the crews of such boats usually have of the waters on which they ply, they may place any ship in their charge in great real or apparent peril, how difficult of detection such a crime must be, and how strong the temptation to commit it, their lordships are of opinion that such cases require to be watched with the closest attention, and not without some degree of jealousy ”(r).

Instances of  
salvage su-  
perseding  
towage.

In illustration of the principle above laid down as to the right of the tug to extra remuneration for extraordinary services, it may be convenient to refer to the circumstances of the following cases in which such extra remuneration was awarded. In the case then under discussion, *The Minnehaha*, the vessel proceeded against, was a large ship, with a valuable cargo, which had brought up in the mouth of the Mersey. She there engaged *The U. K.*, a steam-tug, to tow her to Liverpool, for thirty guineas, and shortly after the service commenced the hawser broke, and the ship drifted over a shoal into Formby Hole, a place of danger, and *The U. K.* got out her own hawser and attached it to *The Minnehaha*, and with the assistance of another tug manœuvred the ship so as to prevent her getting fast on the

(r) See also *The Annapolis*, 1 Lush. 355.

bank, and eventually succeeded in towing her into Liverpool. For this service the tug was held entitled to salvage reward.

In a nearly similar case, that of *The Albion* (*s*), a steam-tug was engaged to tow the ship from the North Foreland to Gravesend, and towed her to the Princes Channel, where both vessels anchored to stop tide. In the night a gale of wind rose, and blew the ship to sea, with loss of anchors and damage to hawse pipes, bow planking, and windlass. The tug was forced to run to Ramsgate, and the next day, the weather having moderated, she put to sea, and after a considerable search discovered the ship, which had received an anchor and chain by a lugger from the shore. The ship was then towed with the assistance of another tug, to the port of London. It was held that the services of both tugs were in the nature of salvage, and that the first tug was entitled to salvage remuneration for her labour and loss of time whilst seeking the ship (*t*).

It is not necessary, to entitle a tug to salvage instead of towage remuneration, that she should have undergone any risk in rendering the extraordinary services. In the case of *The Pericles* (*u*), Dr. Lushington, in referring to the judgment in *The Minnehaha*, thus expresses himself : “ I am not disposed for petty services to consider steam-tugs relieved from the obligation of the towage contract, but I do not understand it to be law that a tug under a contract to tow, can under no circumstances earn salvage re-

Risk to the  
tug not  
essential.

(*s*) Lush. 282.

(*t*) See also *The Saratoga*, Lush. 318 ; *The Annapolis*, Ibid. 355.

(*u*) Browning & Lush. 80, 81.

CHAP. II. ward unless she herself incurs risk in the performance of the superior service of saving. I do not gather such to be the law from the judgment of the Privy Council, nor is it in accordance with the rules of salvage prevailing in this Court. Risk to the salvor is not a necessary element of salvage, though it does, as we all know, enhance the merit of the service, and earn a higher reward."

Where  
accident  
happens  
before  
towage  
commences.

If after a towage agreement is made, but before the tug has commenced the performance of her task, an accident should happen to the vessel about to be towed, and the tug renders salvage assistance, she will be entitled to salvage reward for those services (*x*). Thus, where during a gale of wind a tug agreed with the master of a vessel to tow her from the Nore to London for 16*l.* as soon as the weather moderated, and in the meantime, the vessel, having lost ber jib stay, fore-topsail yard, missed stays and got upon the Blyth Sand, and hailed the tug, which endeavoured, unsuccessfully, to get her off that tide, but next tide did tow her off, and took her to Deptford. The Court considered that the 16*l.* agreed upon did not cover the whole service, and awarded the tug 60*l.* (*y*).

Towage  
generally  
applies only  
to unin-  
jured  
vessels.

In the absence of any agreement, towage service for towage remuneration ordinarily applies only to cases where the vessel receiving the assistance is uninjured. "I apprehend," says Dr. Lushington (*z*), "that mere towage service is confined to vessels that have received no injury or damage, and that mere

(*x*) *The William Brandt*, 2 Notes of Cases, Supp. 67.

(*y*) *Ibid.*

(*z*) *The Reward*, 1 W. Rob. 174—177.

towage reward is payable in those cases only where the vessel receiving the service is in the same condition she would ordinarily be in without having encountered any damage or accident.” And in another case (*a*), the same learned judge, in deciding upon the claim of a steamer to salvage remuneration, says : “With regard to the claim of the steamship, she performs a service to a vessel disabled and in distress, and taking her in tow cannot by possibility be compared to an ordinary towage service.”

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There are many instances in which steam vessels have consequently been held entitled to salvage reward for merely towing disabled vessels. Thus, where a mail steamer, carrying passengers, lost her screw whilst at sea, but being fully equipped as a sailing vessel, made sail, the weather being fine, but the wind light and adverse, and three days after the accident, and whilst she was still beating to windward, fell in with another steamer, which at her request took her in tow, and towed her into port ; the steamer rendering this service was held entitled to salvage (*b*). And in another and previous case (*c*), where an East Indiaman, going down Channel, was completely dismasted by a sudden squall, but having four anchors and 412 fathoms of chain cable, she anchored in mid-channel, and the next day, the weather being fine, jury-masts were rigged, and the

(*a*) *The Charles Adolphe*, Swa. 153—157. For cases where the steamer was held entitled to mere towage, the vessel towed being in no danger, see *The Princess Alice*, 3 W. Rob. 138 ; *The Harbinger*, 16 Jurist, 729 ; *The Lady Egidia*, Lush. 513 ; *The Galatea*, Swa. 349.

(*b*) *The Ellora*, Lush. 550. See *The Batavier*, 1 Spinks, 169.

(*c*) *The Isabella*, 3 Hagg. 427.

**CHAP. II.** mate sent on shore to engage a steamer, which subsequently came out and towed the vessel to an anchorage. In this case the Trinity Masters were of opinion, as seamen, that the service was merely towage, there being no risk, no straining of engines, and the weather being fair during the whole time ; but they thought the service, though not essential to the safety of the vessel, one that should be handsomely rewarded, and the Court decreed the steamer entitled to salvage (*d*).

Concealment of damage entitling tug to repudiate agreement.

Effect of concealment of state of vessel.

The concealment from the tug, by the master of the vessel to be towed, of her damaged condition, may entitle the tug to repudiate the towage agreement, and to sue for salvage (*e*). There is no obligation, however, upon the master of a vessel to point out to those with whom he is about to contract for assistance, every circumstance that has occurred during the voyage (*f*). To sustain the repudiation of the agreement, there must have been a deliberate concealment of circumstances important in themselves (*g*), and of such a nature as to operate to the injury of the owners of the tug in the performance of her task. And where the owners and crew of a tug which had entered into an agreement for the towage of a vessel sued for salvage, alleging the agreement to be invalid by reason of the fact of the illness of a great part of the crew of the vessel saved having been withheld from them, but failed to prove that the property had been in any danger, the Court

(*d*) See also *The Beulah*, 2 Notes of Cases, 61 ; *The Red Rover*, 3 W. Rob. 150.

(*e*) *The Kingalock*, 1 Spinks, 263.

(*f*) *The Jonge Andries*, Swa. 226.

(*g*) *Ibid.*

pronounced for the agreement, and dismissed the CHAP. II.  
claim with costs (*h*).

Where a tug comes to the assistance of a ship in danger, and makes a towage contract, and nothing supervenes afterwards to change the character of the services, the tug is not entitled, notwithstanding the distressed condition of the vessel, to more than mere towage remuneration (*i*). Tug held to  
agreement  
with dis-  
tress-ed  
vessel.

When the tug performs extra services, such as putting the master on shore to bring off additional anchors, she will be entitled to claim additional remuneration for those services (*k*). Extra ser-  
vices by  
tug.

### *Ship's Agent Claiming Salvage.*

The acceptance of an agency for the ship from the master or owner, does not disqualify the agent from maintaining a suit for salvage, in respect of any services of that nature which he may render during the course of his employment. Strictly speaking, however, such services are to be regarded rather in the light of a meritorious agency than as salvage (*l*), and the agent is to be rewarded upon a less liberal scale than volunteer salvors suing in respect of extraordinary services. "I will assume," says Dr. Lushington (*m*), "the case of a vessel becoming stranded in the vicinity of a port where there resides a person carrying on the business of a merchant and ship agent, and that the master applies to such Ship's agent  
suing for  
salvage.

(*h*) *The Canova*, L. R. 1 Ad. 54.

(*i*) *The Minnehaha*, 1 Lush. 335—352.

(*k*) *The White Star*, L. R. 1 Ad. 68.

(*l*) *The Favorite*, 2 W. Rob. 255—259; *The Watt*, Ibid.

(*m*) *The Purissima Concepcion*, 3 W. Rob. 181, 182.

person in the character of ship agent for such assistance in getting off the ship and cargo as, under the circumstances, may be necessary. I will further assume that such agent undertakes the task, and employs the necessary persons to perform it, he himself personally superintending the operations, but taking no active part in the duty, and not incurring the slightest risk to his own life, or danger to his person. The question is, whether an individual claiming as salvor under such a state of circumstances, can or cannot maintain his action in this Court? Upon a balance of all considerations, independently of decided authorities, I am clearly of opinion that it is for the advantage of all parties concerned, and for the benefit of mercantile interests in general, that the Court should possess the jurisdiction to entertain the suit" (n). And where a person who, under an agreement with the master of a stranded vessel, took charge of the ship, which subsequently went to pieces, and succeeded in saving and warehousing a portion of the cargo, to the value of about 600*l.*, brought a suit for salvage remuneration, and the return of his expenses,

(n) See also *The Happy Return*, 2 Hagg. 198, in which Sir C. Robinson decided that a person might act as an agent, and claim as salvor, although he did not in person actually perform anything strictly in the nature of a salvage service. In this case the Court was satisfied, upon the evidence, that it was understood and sufficiently expressed, that the claimant, who had been appointed "the true and lawful attorney, in the name of the master, to use all possible means for the recovery of the ship and cargo," should act as agent, and that his claim for salvage should be controlled by that understanding: it held that such character nevertheless did not wholly supersede the character of a salvor so as to exclude the jurisdiction of the Court of Admiralty. See also *The Cargo Ex Honor*, L. Rep. 1 Ad. 87; *The Vesta*, 4 Irish Jurist, 210.

amounting to 155*l.*, the Court entertained the suit, and awarded 250*l.* to cover all expenses except costs (o).

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The fact that the claimant acted as Lloyd's agent at the port where the services were rendered, will not disentitle him to sue for salvage (p). And where a foreign vessel went aground, and the master applied to a ship agent who was Lloyd's agent at the place, and the agent took charge of the vessel, employed men to unload her, and the vessel having by their assistance been got off was brought into harbour, where the cargo was sold. The agent's claim and accounts having been disputed, he brought an action as a salvor, and the Court, notwithstanding he had only employed men, and had himself incurred no personal risk in the transaction, entertained the claim (q)

If a magistrate, acting in his public capacity, should go beyond the limits of his official duty in giving extraordinary assistance, he is entitled to salvage reward (r).

(o) *The Favorite*, 2 W. Rob. 255. See also *The Happy Return*, *ubi supra*, where the Court, out of a value of 4500*l.*, gave, together with costs, 225*l.* to the agent claiming salvage, in addition to 815*l.* for disbursements. But see *The Cargo Ex Honor* (*ubi supra*), where the disbursements were 119*l.*, and a tender of 80*l.* additional was held to be sufficient.

(p) *The Purissima Concepcion*, 3 W. Rob. 181.

(q) Ibid. But see *The Lively*, 3 W. Rob. 64, where Dr. Lushington dismissed a suit by a Lloyd's agent, in which the claimant alleged that he had engaged men and horses, and directed their employment. In that case, however, the claimant had been paid 20*l.* in addition to expenses of 118*l.*, and the nature of his services was disputed.

(r) *The Aquila*, 1 C. Rob. 37—46. In this case, however, the claimant was held not to have rendered such services as to entitle him to participate in the salvage. In the American case *Le Tigre*, 3 Wash. C. C. 567, Washington, J., is thus reported : “ We have no doubt that if a collector, or other revenue officer, intending to act in the line of his official duty, but mistaking

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Salvage by  
seamen of  
Royal Navy  
and coast-  
guard men.

Officers and seamen of her Majesty's vessels, who render salvage services, and encounter personal risk and labour, stand on the same footing as other salvors (s). They are not to be employed gratuitously in the salvage of property of private individuals, to save them from expense, nor are they to hazard their lives, or undergo labour, without reward (t). They are entitled to be rewarded in a precisely similar manner, on the same principles, and in the same degree as other persons rendering such services (u). The fact, however, that the salvors do not risk their own property, will be taken into consideration in fixing the sum to be awarded (x).

By an order of the Board of Admiralty, of 30th January, 1852, officers of her Majesty's ships are directed not to claim for salvage services rendered to vessels in distress, unless the service was really important or accompanied with hazard (y), and no salvage claim by officers and men of the Royal Navy is to be finally adjudicated upon, unless the written

the law, and transcending his authority, is the meritorious cause of saving property to the owner, he is not precluded, on account of the motive which actuated him, from claiming salvage."

(s) *The Wilsons*, 1 W. Rob. 172. See *The Alma*, 1 Lush. 378; *The Louisa*, 1 Dodson, 317; *The Ewell Grove*, 3 Hagg. 209; *The Rosalie*, 1 Spinks, 188; *The Mary Pleasants*, Swa. 224; *The Thetis*, 3 Hagg. 14; *The Mary Ann*, 1 Hagg. 158; *The Beaver*, 3 C. Rob. 292.

(t) Judgment of Sir John Nicholl, *The Lustre*, 3 Hagg. 154.

(u) *The Iodine*, 3 Notes of Cases, 140; *The Charlotte Wylie*, 5 Notes of Cases, 4.

(x) *The Earl of Eglinton*, Swa. 7. See *The Alma*, 1 Lush. 378.

(y) See also *The Rapid*, 3 Hagg. 419-421, where Sir Robert Nicholl, in giving judgment, observes, that to entitle her Majesty's ships to claim salvage, the service rendered must be important. See also *The Francis and Eliza*, 2 Dods. 115.

consent of the Secretary to the Admiralty has been first obtained, and in the absence of such consent the suit is to be dismissed with costs (*z*); subject to the same consent being obtained, officers and men of the Royal Navy can also recover remuneration for life salvage (*a*).

The American law cannot be said to differ in any material respect from that of England, with respect to salvage services rendered by seamen connected with the ships of war of the United States. It would appear, however, to be an unusual thing for such ships to claim salvage (*b*). By one of the United States statutes (*c*), the President is authorised to cause a suitable number of public vessels to cruise upon the coast in the severe portion of the season, for the purpose of affording assistance to vessels in distress. Whilst engaged in that service, the opinion seems to be that they would not be entitled to any extra compensation, but that there is nothing to prevent them acting as salvors at any other time (*d*). As to the nature of the services which would entitle government vessels to sue as salvors, the observations of Mr. Justice Nelson, in

(*z*) 17 & 18 Vict. c. 104, s. 485. In lieu of the above provision, it is proposed by the New Merchant Shipping Code, s. 417, to enact that claims for salvage rendered by any of her Majesty's ships, or by the commander and crew thereof, are only to be made, and prosecuted by the Admiralty at their discretion, on behalf of such commander or crew, before any Court having Admiralty jurisdiction.

(*a*) *The Alma*, 1 Lush. 378—381. For the provisions as to salvage services rendered by Queen's ships abroad, see 17 & 18 Vict. c. 104, ss. 486, 487, 488, 489, 490, 491, 492, 493, 494.

(*b*) Parsons on Shipping, vol. ii. p. 273.

(*c*) Act of December 22, 1837, c. 1.

(*d*) See 2 Parsons on Shipping, p. 274, where the opinions of the American attorneys-general are quoted.

CHAP. II. the case of *The Josephine* (*e*), go to show that the American Courts lean, as does the Court of Admiralty in this country, against salvage claims by these vessels, where the services have been slight or unimportant. "In such cases," observes Mr. Justice Nelson, "something more than the usual peril should be encountered by the officers and crew, and an extraordinary service should be rendered, exceeding the duty imposed upon them by their employment in the public service, and the special instructions of the government on the subject. Ordinary service in rescuing American vessels in distress, requiring no great hardship or peril on the part of the officers and crew, would seem to fall directly within the line of the general duty thus enjoined. It is a service bestowed by the government for the protection and encouragement of its commercial marine, and the right to impose this duty on government vessels is too clear to be controverted. Great and extraordinary service and peril in rescuing a vessel and her cargo, would present a different question, and stand upon different principles and policy. Such acts should of themselves be the subject of reward and encouragement, and would not be necessarily comprehended in the duty resulting from the public employment of the persons rendering it, or from the instructions of the government."

(*e*) 2 Blatch. C. C. 322. In this case the United States war sloop *Plymouth* towed into an American port an American merchant vessel, found abandoned at sea 500 miles distant, but the delay caused was only one of two days, and no extraordinary service was rendered, and no unusual hardship or peril encountered. The officers and crew were held not to be entitled to salvage.

It has been held in America, that the officers and crew of a foreign war vessel are entitled to claim as salvors (*f*), and it is presumed that no objection would lie to such a salvage suit if brought in this country.

CHAP. II.

Salvage by  
officers and  
crew of a  
foreign  
vessel of  
war.

Where services are rendered by officers and men of the coastguard service in watching or protecting shipwrecked property, they are entitled, unless it can be shown that their services were declined by the owner of the property, or his agent at the time they were tendered, to be paid, but only according to the scale of remuneration fixed by the Board of Trade (*g*). With respect, however, to salvage services involving risk rendered by coastguard men, although it is part of their duty to save life and property, it is nevertheless a duty for which they are to be paid ; and if they incur danger, or undertake labour beyond the scope of their duties, as pointed out by the Merchant Shipping Act, 1854, and by the instructions issued to them from the Board of Trade, as if, for instance, they actually put to sea, and with risk and effect, to save lives or property from a wrecked vessel, they will be entitled to salvage in the same manner, and to the same extent, as other salvors (*h*).

(*f*) *Robson v. The Huntress*, 2 Wallace, Jun., Rep. 59. In this case a sum of 2000 dollars was awarded to her Majesty's vessels *Gladiator* and *Jackall*, for salvage services rendered to an American brig on the west coast of Africa.

(*g*) 18 & 19 Vict. c. 21, s. 20.

(*h*) *The Silver Bullion*, 2 Spinks, 70 ; *The London Merchant*, 3 Hagg. 394 ; *The Clifton*, 3 Hagg. 117. But see *The Queen Mab*, 3 Hagg. 242 ; *The Amazon*, 2 L. T. 140. Board of Trade instructions to Receivers of Wreck, Officers of Coast-guard, &c.

CHAP. II.  
American  
law.

The American Courts have recognised the right of revenue officers to become salvors by meritorious services outside the limits of their duty. In *Le Tigre* (*i*), where a collector, intending to act in his official capacity, but mistaking the law, was the cause of saving property to the owners, it was held that he was entitled to salvage.

(*i*) 3 Wash. C. C. 567.

## CHAPTER III.

### DIFFERENT SETS OF SALVORS.

IT sometimes happens that different sets of salvors claim remuneration in respect of the same service. The decision, in such cases, will be found mainly to depend upon whether the property saved was or was not derelict at the time the services were rendered ; and if derelict, whether the salvors first in possession could, unassisted, have completed the undertaking upon which they had entered.

If the vessel in distress has not been abandoned by her master and crew, there can be no great difficulty in determining which set of salvors will be recognised by the Court. The master of the vessel, whilst he continues on board, is entitled to retain the command and control of the ship and cargo, and to direct the work of the salvors, who are little more than assistants and labourers under him. He may reject the help of persons whom he does not think fit to employ, and those whom he does employ are bound to obey his orders (*a*) ; and if other salvors dispossess those whom the master has employed,

CHAP. III.  
Riyal  
salvors.

Salvor  
bound to  
obey orders  
of master of  
vessel in  
distress.

(*a*) *The Dantzic Packet*, 3 Hagg. 383 ; *The Champion*, B. & Lush. 69 ; *The Glasgow Packet*, 2 W. Rob. 306 ; *The Martha*, Swa. 489 ; *The Effort*, 3 Hagg. 165.

CAP. III.  
Master's  
authority  
after leaving  
vessel.

and force their own services upon him, the Court will refuse to award them any remuneration (b).

Nor is the master's authority, in this respect, affected by the circumstance that he and his crew leave the vessel for the purpose of procuring assistance. "As between the master and salvors," observes Dr. Lushington, "unless the vessel is absolutely derelict, and the master's authority is at an end, he is entitled to resume charge of the ship, to employ whom he pleases, and to take what measures he thinks proper for the preservation of the ship. The occupying salvors are entitled to reward for the services they have actually rendered, and no more" (c). In *The Champion* (d), in which the foregoing observations were made, that vessel, which was laden with timber, having got aground, the master and crew left in a lifeboat which came to their assistance, the intention of the master being to procure a steam-tug as soon as possible, and return. On his return with the tug next day, he observed, on nearing his vessel, the *Prince of Wales*, another steam-tug, approaching her, and this tug succeeded in reaching the vessel first, and put some men on board.

(b) *The Fleece*, 3 W. Rob. 278. In giving judgment in this case, Dr. Lushington, at p. 281, observes, "I go the whole length of laying down this principle, that where salvors are on board a ship in distress, and their services have been accepted by the master, if, before they have done one stroke of work, they are forcibly dispossessed (without the concurrence of the master) by any persons who in any manner save the ship or cargo, or part of the same, the alleged second set of salvors can earn nothing for their own benefit, but every act done, and every service performed by them, must enure to the benefit of the original salvors."

(c) *The Champion*, B. & L. 69-71.

(d) *Ubi supra*.

These men the master ordered off the vessel, and on their refusing to leave, forcibly dispossessed. It was held, on a suit being brought for salvage by the crew of the *Prince of Wales*, that the vessel not being a legal derelict, the master was entitled to resume his authority in the manner he did, and the suit of the salvors was dismissed with costs.

CHAP. III.

### *Legal Derelict.*

Where the vessel saved is a derelict, then the salvors who are first in possession, if capable of saving the property, are entitled to complete the salvage, and to exclude others from joining in it (e).

In cases of  
derelict,  
first salvors  
favoured.

In these cases, however, it is sometimes a matter of some difficulty to determine whether a vessel is or is not a legal derelict, and it is therefore considered desirable to direct attention to the leading decisions upon the subject.

A vessel is said to be derelict, in the sense of the Maritime Law, when she has been abandoned at sea by her master and crew, without any hope of returning (f). The mere fact of a vessel being found at sea without any one on board her, is not sufficient to constitute her a legal derelict. She must not only have been deserted at sea, but deserted *sine spe recuperandi*. If the master and crew leave her temporarily, without any intention of final abandonment, but with the intention of returning and resuming possession, such a vessel is not to be considered a derelict, nor is the right of possession lost by such tem-

What con-  
stitutes a  
legal derelict.

Leaving  
vessel to  
procure  
assistance  
does not  
make her  
a legal  
derelict.

(e) *The Maria*, Edwards, 175.

(f) *The Aquila*, 1 C. Rob. 37.

CHAP. III. porary absence, although no one may be remaining on board the vessel for the purpose of retaining possession (*g*). Thus, where the master and crew of a vessel having lost their reckoning, upon approaching a strange coast left their ship at anchor and went on shore for the purpose of ascertaining their position, and not with the intention of abandoning the vessel, and the vessel, during their absence, got adrift, and was taken in charge by salvors, she was held not to be a derelict (*h*).

Onus of proving intention to return rests on owner.

The *spes recuperandi* depends upon the intention at the time of abandonment.

The onus of proving the intention to return rests upon the owner of the vessel, for *prima facie* a vessel found at sea in a position of peril, and without having any one on board, is a derelict (*i*). In these cases the *quo animo* is the material question, and in determining whether a vessel has or has not become a derelict by abandonment, the point of inquiry is not so much what was the actual state of things when the desertion took place, or whether the master and crew were or were not mistaken as to the peril or condition of the vessel, as what was the intention

(*g*) *The Clarisse*, Swa. 129. See also *The Aquila*, 1 C. Rob. 37, "Sir W. Scott. This is a case of a ship and cargo found derelict at sea, and certainly it is a case of legal derelict, for it is by no means necessary to constitute a derelict that no owner should afterwards appear. It is sufficient if there has been an abandonment at sea by the master and crew without hope of recovery; I say without hope of recovery, because a mere quitting of the ship for the purpose of procuring assistance from shore, or with an intention of returning to her again, is not an abandonment." And see also the American cases, *The Bee*, Ware, 336; *Rowe v. Brig ——*, 1 Mason, 372; *Tyson v. Prior*, 1 Gallis, 133; *The Island City*, 1 Black, 121; *Williams v. The Cargo of the Adolphe*, 19 Am. Jur. 219.

(*h*) *The Hercule*, 8 Irish Jurist, 412. See also *The Fenwick*, *The Mary*, Pritchard's Digest, 824.

(*i*) *The Cosmopolitan*, 6 Notes of Cases, Supp. 17—19.

by which they were actuated at the time. If a master and crew leave their vessel for the safety of their lives, a mere intention of sending a steamer to look for her does not take away from the vessel its character of a legal derelict (*k*). Nor if the vessel be abandoned without the existence at the time of any hope or intention of returning, will a subsequent change of opinion under new circumstances, and a return, save it from having become a legal derelict, of which salvors may lawfully possess themselves before such repossession.

In the case of *The Sarah Bell* (*l*), that vessel, during tempestuous weather, struck upon the Hasborough Sands, where she lay waterlogged, and in a position of extreme danger. The master and crew, in great alarm for their lives, took to their boats, and rowed to a light vessel three or four miles distant, Whilst in the light vessel they, as they alleged, were on the watch to regain their ship, and when next morning they saw her floating off the sand they rowed after her. The salvors had, in the meantime, put off from the shore in their boats, and got on board the vessel before the master and crew. Upon a suit for salvage being brought, the Court was of opinion that the master and crew at the time they left the vessel, had no reasonable hope of returning to her; that they quitted her for the purpose

(*k*) *The Coromandel*, Swa. 205. See also *The Gertrude*, 30 L. J. Ad. 130. Where a vessel was found by the salvors abandoned, with four or five feet of water in her hold, the captain and crew having left, carrying away their clothes and compasses, she was held to be a legal derelict, although the master and crew came off and boarded her after the salvors had got on board.

(*l*) 4 Notes of Cases, 144.

CHAP. III.

Mere intention to send a steamer to a vessel abandoned from risk of life not enough.

Subsequent change of opinion and return does not affect the question.

*The Sarah Bell.*

V

CHAP. III. of saving their lives, and not in consequence of any temporary danger which might pass away and give them an opportunity of regaining her, and consequently it held the vessel to be a legal derelict (*m*).

When vessel left without any intention either way.

If at the time the vessel is left there is no *animus* or *spes* either way, the vessel is not a derelict. Thus, where the master and crew of a schooner instinctively jumped on board a ship in a collision, and were carried off against their will, the captain of the ship refusing to lend them a boat to return to their own vessel, it was held that the schooner, although found by salvors without any one on board, was not a legal derelict (*n*). Where, however, a vessel in a collision was left so abandoned for three days, she was held to be a legal derelict (*o*).

(*m*) In his judgment in this case, Dr. Lushington, p. 146, observes: "Now with respect to the *spes recuperandi* at the time they quitted the vessel, I think they could not rationally have entertained much hope of returning to her. They quitted her because they expected that their lives would be lost if they remained, not because of any temporary danger which might pass away, and they might have an opportunity of regaining her, but they quitted her because the vessel was lying fast in the sand, and for the sake of saving their lives. But it is said that after they got on board the light vessel, their expectations and view of the circumstances changed, and an affidavit has been made by the mate of the light vessel, in which he swears to his belief that the vessel would have come off the sand. It may have been so, but when we speak of the *spes recuperandi*, we mean the hope and expectation entertained by the master and crew of returning to their vessel—not what was the precise state of things, but what was the intention by which they were actuated at the time."

(*n*) *The Cosmopolitan*, 6 Notes of Cases, Supp. 17. The law of derelict is elaborately reviewed in this case. See also *Fenix*, Swa. 13, where abandonment at time of collision was held not to constitute a vessel a legal derslct.

(*o*) *The Pickwick*, 16 Jur. 669, 670. "Dr. Lushington: It has never been held that abandonment at the instant of collision

The position in which the vessel was at the time of abandonment is some evidence as to the intention of the master and crew at the time of leaving. Dr. Lushington, in the case of *The Florence* (*p*), is thus reported: "I hold there to be a very wide distinction between an abandonment at a distance from land on the open ocean, and the quitting the ship on the coast, when there may exist a fair expectation of returning where the *spes recuperandi* is probable."

CHAP. III.  
Position of  
vessel as  
evidence of  
intention.

A ship or goods sunk in the sea are generally derelict. They are not so, however, as long as the owner continues to assert his claim, and does not give up the intention of resuming the possession (*q*).

A vessel may be considered a derelict so far as the amount of the salvors' remuneration is concerned, without being a legal derelict; that is to say, abandoned *sine animo recuperandi* (*r*); and salvage, as in the case of a derelict, has been awarded, even where

Larger re-  
ward when  
vessel an  
actual  
though not  
legal dere-  
lict.

constitutes 'derelict,' but I can entertain no doubt that in the legal sense of the word this vessel was derelict, because three days had elapsed from the time of collision." See also *The Livingstone*, Prit. Dig. 824.

(*p*) 16 Jur. 572, 573. See nearly similar observations in *The Genessee*, 12 Jur. 401. In the case of *The Minerva*, 1 Spinks, 271, where the crew of a vessel were drowned after they had abandoned her, but before they reached the shore, and it consequently was impossible to say whether they had a *spes recuperandi* or not, Dr. Lushington held that in every sense, legal or otherwise, the vessel was to be considered a derelict. See also *L'Esperance*, 1 Dods. 46; *The Berlin*, 3 Irish Jurist, N. S. 34.

(*q*) *The Barefoot*, 14 Jurist, 841; *The Beaver*, 3 C. Rob. 292; *The Samuel*, 15 Jurist, 407. See *The Thetis*, 3 Hagg. 14; *The St. Petersburgh*, *The Sophie*, Pritchard's Digest, 824.

(*r*) Judgment of Dr. Lushington, *The Genessee*, 12 Jur. 401, 402.

**C**HAP. III. the abandonment took place simultaneously with the salvage of the cargo. In the case of *The Columbia* (*s*), that vessel was found by the salvors in a sinking state, and her crew, who were exhausted, refused to remain by her. The salving vessel then took off the captain and crew, and saved property to the value of 10,000*l.* The Court considered the vessel as a derelict, and awarded the salvors a moiety of the property saved.

American decisions as to derelict.

The American Courts have acted upon these principles ; and as regards the remuneration of salvors they have held that where a vessel at sea, though not abandoned, has on board only persons both physically and mentally incapable of doing anything for their safety, this constitutes a case of *quasi* derelict, and calls for a liberal compensation to salvors, especially if life as well as property has been saved (*t*). In *Flinn v. Leander* (*u*), a vessel with slaves on board, but no white person, was considered a derelict, and one-third given as salvage to the person bringing her in. In *The Boston* (*x*), the master and crew left their vessel in a sinking condition, and were picked up by another vessel while yet in sight of the wreck. The vessel and cargo thus left were held to be derelict.

(*s*) 3 Hagg. 428.

(*t*) *The George Nicholaus*, 1 Newb. 449.

(*u*) *Bee*, 260.

(*x*) 1 Sumn. 328. See also *The Henry Eubank*, Ibid. 400 ; *The Delphos*, 1 Newb. 412 ; *The T. P. Leathers*, Ibid. 421 ; *The Charles*, Ibid. 329 ; *The John Gilpin*, Olcott, 77 ; *The Dodge Heally*, 4 Wash. 651. And as to what constitutes a derelict, see *Mesner v. Suffolk Bank*, 1 Amer. L. R. 248 ; *Warde v. La Belle Creole*, 1 Pet. Ad. 31 ; *Sims v. The Elizabeth and Jane*, Ware, 27 ; *The Bee*, Ibid. 336 ; *The Charles*, Newb. 329 ; *Wilkie v. The St. Petre*, Bee, 82 ; *The British Consul v. Smith*, Bee, 178.

*First Salvors favoured.*

CHAP. III.

Assuming the vessel to be derelict in the legal sense of the word, as laid down in the foregoing decisions, and in the possession of salvors competent to bring her into a position of safety, the Court of Admiralty will protect the rights of such first salvors with some jealousy, and it will refuse to allow those who, without sufficient cause, dispossess them, to participate in the salvage. “I have,” says Lord Stowell(*y*), “no hesitation in confirming the doctrine I have over and over again laid down, that persons dispossessing original salvors without reasonable cause, shall receive no benefit from the services they may afterwards perform, but the whole reward shall go to those who have been wrongfully dispossessed. Those who are wrong doers shall take no advantage from their own wrong (*z*). ”

In the case of *The Blendenhall* (*a*), where the foregoing observations were made, that vessel had been taken by a French ship-of-war, her master and crew made prisoners, and the ship, after being scuttled,

Salvors in  
possession  
of derelict  
favoured.

(*y*) *The Blendenhall*, 1 Dods. 414—418.

(*z*) See also *The Fleece*, 3 W. Rob. 278, where Dr. Lushington, after stating that he entirely acceded to the principle above laid down, and would at all times be disposed to act on it, is reported thus, p. 279: “It could not, I apprehend, be for a single moment contended that persons so unlawfully intruding themselves, and by force dispossessing salvors of a vessel and cargo in their care and charge, could derive any salvage benefit from their own misconduct. It is clear they would have no *persona standi* in this Court, and any claim which had been asserted on their behalf, must have been dismissed with costs. See also *The Charlotta*, 2 Hagg. 361; *The Clarisse*, Swa. 129; and the American cases, *The Mary*, 2 Wheaton, 123; *The Brig John Gilpin*, Olcott, 77.

(*a*) *Ubi supra.*

CHAP. III. left a derelict. In this position she was found by a Post-office packet, and was taken possession of by the master and ten of his men, who having cleared the ship of water and set her to rights in other respects, were conducting her to Plymouth, when they fell in with the *Challenger*, a brig-of-war, and the captain of that vessel, notwithstanding that no assistance was required from him beyond the supply of a log, glass, watch, and chart, put a master's mate and nine hands on board, to conduct the vessel to Portsmouth. Upon these facts Lord Stowell held the Post-office packet to be the sole salvor, and refused to give any portion of the salvage to those who had been put on board from the *Challenger* (*b*).

American decisions.

The American Courts have recognised and acted upon this principle. In the case of *The Amethyst* (*c*), a wreck, having been discovered by three schooners, was boarded by one of them, and although no one remained on board that night, the three vessels lay by the wreck in order to tow her into port the next morning. At daybreak she was about a mile from them, and they proceeded at once to take possession, but before they reached the wreck it had been boarded by the crew of another vessel; these the salvors dispossessed, and towed the vessel off. On a salvage suit being brought, it was held that the possession the salvors had taken the night before was

(*b*) See also *The Eugene*, 3 Hagg. 156, where two sets of smacks claimed as salvors; and the suit of the second set was not sustained, their assistance having been obtruded, and see *The Samuel*, 15 Jurist, 407; *The Queen Mab*, 3 Hagg. 242; *The Glasgow Paeket*, 2 W. Rob. 306; *The Glory*, 14 Jurist, 676.

(*c*) *Daveis*, 20.

sufficiently continuous, and that the crew of the fourth vessel, whom they had displaced, were not entitled to any salvage (d).

This principle of favouring the salvors first in possession is, however, one in the application of which the Court necessarily proceeds with very great caution ; and although it puts upon second salvors the onus of proving either the adoption of their services or the incompetency of those already in possession to complete the salvage (e), they have not ordinarily been required to make out a very strong case, and it is apprehended that it will be sufficient if they can show that the circumstances of the case afforded them a reasonable justification for their interference (f). The Court has consequently held the second salvors to be entitled to participate under circumstances where it was possible that the original salvors could, unassisted, have completed the service (g).

Thus in the case of *The Pickwick* (h), that vessel having been abandoned at sea, was fallen in with, three days afterwards, by *The Agnes*, a small schooner, which took her in tow, and proceeded with her towards Liverpool. After the derelict had been

(d) See also “A quantity of Iron,” 2 Sprague, 51.

(e) *The Blendenall, ubi supra.* A mere acquiescence or submission by the first salvors to the superior numerical force of the second set, will not be sufficient evidence of consent, *The Eugene*, 3 Hagg. 156.

(f) *The Pickwick*, 16 Jur. 669, 670. Dr. Lushington : “The second set of salvors must show that there was no fair probability that the vessel could be brought into port in safety in due time by the first set, but it would be most injurious to mercantile interests, if the principle was carried to an extreme extent.”

(g) *The Pickwick, ubi supra.*

(h) 16 Jnrist, 669.

CHAP. III. in charge of the schooner for about half an hour, *The President*, a steamer which had been chartered by the underwriters of *The Pickwick*, came up, and forcibly dispossessed the crew of the schooner. The Court held that, under the circumstances, both the schooner and steamer were entitled to salvage, Dr. Lushington, in the course of his judgment, observing: “Here is a schooner of 75 tons burthen, manned with six persons, three of whom go on board *The Pickwick*, upwards of 400 tons burthen, and laden with a valuable cargo, in the middle of February. Can any reasonable man come to the conclusion that there was anything like an appearance of safety under these circumstances? It seems to me that it was the bounden duty of those on board *The President* to exercise the authority given them by the owners to render assistance to the vessel. The only chance of *The Agnes* effecting the service was from the continuance of a fair wind. Looking at the value of the property, 32,000*l.*, I think I can say it was the duty of those on board *The President* to take *The Pickwick* into their own care, and tow her into a place of safety. I say this without imputing the slightest blame to those on board *The Agnes*. I give them credit for doing all that was in their power to do. It must, however, be remembered, that *The Agnes* was displaced only on the plea of necessity, and unless that necessity was clearly established, she would be entitled to be considered as a sole salvor. It is rather a hardship for her, for she had a chance of performing the whole service.”

Where services of se-

Where the assistance of the second salvors was

beneficial rather than absolutely necessary, they have been awarded salvage. In the case of *The Charlotta* (*i*), two yawls were in the act of bringing a derelict into port, and a revenue cutter insisted, notwithstanding the protest of the salvors, on towing the vessel ; the Court, although it seemed to be of opinion that the first salvors could alone have completed the service, and refused to detract from their merits by deducting anything for the cutter from the two-thirds which it awarded them, yet held the services of the cutter to be seasonable and meritorious, and awarded it 100*l.* (*k*).

The Court, although it protects salvors against improper interference, at the same time requires them to avail themselves of further assistance, whilst the success of their efforts remains doubtful, and where they improperly refuse that assistance the Court will award to them a less sum than it otherwise would have given (*l*).

“I cannot conceive,” says Dr. Lushington (*m*), “that any notion can be broached more injurious to the security of the mercantile navy of this country, than a notion that because a man happened first to go aboard a vessel, and then a steam-tug was offered, he had a right to refuse that assistance, and claim to perform the duty himself, because by possibility

(*i*) 2 Hagg. 361.

(*k*) See also *The Berlin*, 3 Irish Jurist, 34; *The Gudrun*, 5 Irish Jurist, N. S. 361; *The Magdalen*, 31 L. J. Adm. 22; *The Elizabeth*, 8 Irish Jurist, 340.

(*l*) *The Glory*, 14 Jurist, 676. In this case the salvors prevented the use of a steamer, and were awarded 100*l.* instead of 300*l.* See *The Berlin*, *ubi supra*; *The Cambria*, Pritchard’s Digest, 767; *The Elizabeth*; *The Gudrun*, *ubi supra*.

(*m*) *The Glory*, *ubi supra*.

CHAP. III.  
cond set  
beneficial  
though not  
necessary.

CHAP. III. a set of salvors might heave a vessel by an anchor, or succeed in getting her off the sand."

The foregoing principle was acted upon in the case of *The Dosseitei* (*n*). In that case a vessel was taken by a set of salvors, anchored in a place of some danger, and left there for several hours, whilst the salvors went for more ropes and spars which were necessary. Another vessel which came up offered her assistance, and if the offer had been accepted the vessel might at once have been taken to a place of safety, but the salvors refused the offer, and after some delay, brought the vessel into port. It did not appear that the delay occasioned any loss to the vessel, but the Court being of opinion that there was great risk in leaving the vessel at anchor in an exposed position, diminished the amount of salvage on that account, and intimated, that if it thought that the refusal of the assistance of the other vessel arose from a deliberate disregard of the safety of the vessel in distress, and from the mere hope of gain, it would have refused compensation altogether (*o*).

#### *Abandonment by first Salvors.*

First set  
abandoning,  
second en-  
titled.

If the first of two sets of salvors abandon the enterprise without any intention of resuming it, and the other set afterwards enter upon the service, and bring it to a successful issue, they will be entitled to the whole salvage.

(*n*) 10 Jurist, 865.

(*o*) See judgment of Dr. Lushington, *The Genessee*, 12 Jurist, 401. See also *The Berlin*, 4 Irish Jurist, 11.

The case of *The India* (*p*) affords a useful illustration of the above principle. There the vessel got upon the sands off the coast of Norfolk, and a boat's crew, which came off from Yarmouth, offered their help, which was accepted, and were then occupied a whole day in assisting the vessel. They ultimately, however, accompanied by the ship's crew, left the vessel without expressing any intention of returning. The vessel was then a derelict on the sands, and whilst in this position was boarded by the second set of salvors, who adopted the necessary measures for getting her off, resisting the attempt to assist of the Yarmouth boatmen, who returned to the vessel, and claimed to join in the salvage. On suits for salvage being brought, the Court dismissed the claim of the first set, and awarded the whole of the salvage to the second (*q*).

In the American case of *The John Wurts* (*r*), that vessel was found by the salvors bottom upwards, dismantled, and deserted. They towed the wreck into port, and claimed salvage. Another set of salvors then intervened, and claimed to share in the salvage, alleging that four weeks before the wreck was discovered by those who brought it into port, the second claimants found it sunk in ten fathoms of water ; that they attempted to raise it, but were obliged to leave on account of bad weather ; that afterwards they procured a steamer, and towed the wreck for about ten miles, when they were driven

American  
case, *John  
Wurts*.

(*p*) 1 W. Rob. 406.

(*q*) See also *The Clarisse*, Swa. 129 ; *The Cosmopolitan*, 6 Notes of Cases, Supp. 17.

(*r*) Olcott, 462.

**CHAP. III.** away by gales, and the wreck blown off to sea; and that they had been in active pursuit of it for three weeks, but could not find it. The claim of the second claimants intervening was dismissed, Betts, J., in his judgment (*s*), making the following observations: "An impression seems to have obtained, that one who finds derelict property under water, or afloat, acquires a right to it by discovery, which can be maintained by a kind of continued claim, without keeping it in possession, or applying constant exertions for its preservation and rescue. There is no foundation for such a notion. The right of a salvor results from the fact, that he has held actual possession, or has kept near to what was lost or abandoned by the owner, or placed in dangerous exposure to destruction, with the means at command to preserve and save it, and that he is actually employing those means to that end. . . . Notorious possession, with the avowal of the object of such possession, are cardinal requisites to the creation or maintenance of the privileges of a salvor ; where they do not exist, any other person may take the property, with all the advantages of the first finder."

First set  
remuner-  
ated for  
actual ser-  
vice.

If, however, the first set leave the vessel for the purpose of procuring assistance, and without the intention of abandoning the undertaking, they may be awarded salvage for any thing they may have done beneficial to the vessel, or which might have rendered the salvage easier or more practicable to those who subsequently complete the service (*t*). In the case of *The E. U.* (*u*), that vessel was driven,

(*s*) Page 469.

(*t*) *The E. U.*, 1 Spinks, 63.

(*u*) *Ibid.*

with both anchors down, by a gale of wind from the S.W. on to the Brake Sand, where she struck heavily, the sea flying over the main-top. She then drifted, and when near the Elbow Buoy was boarded by some men from the Broadstairs lifeboat. These men remained on board to assist the vessel, the remainder of the lifeboat's crew, consisting of five men, returning to the shore for an anchor and chain. The men on board, after working some hours at the vessel, succeeded in wearing her head towards the north, and were then compelled to abandon her, and with the crew of the ship were taken off and landed by a lugger which had lain by the vessel. The lifeboat's crew having procured the anchor and chain, again went in search of the ship, and found her in tow of a steamer. On a suit for salvage being brought by the crew of the lifeboat, it was objected that the claimants had rendered no service whatever towards saving the ship. The Court, however, held them to be entitled to salvage, Dr. Lushington, in the course of his judgment (*x*), thus dealing with the objection that the salvors had done nothing towards completing the salvage of the ship : "The answer is, in my opinion, this,—No one can tell the precise effect of the head of the vessel being put to the N. by those on board the lifeboat. It may have been productive of great benefit, or on the other hand, it may not have been in the slightest degree instrumental in saving the vessel. Looking, however, to the whole case, and especially to the intrepid manner in which the salvors went on board the lifeboat, and the general maritime benefit in inducing persons to

(*x*) Page 66.

CHAP. III. go on in extreme difficulty to save the lives of those in danger, I shall overrule the tender, and give the sum of 300*l.*"

*The Genessee.* In a somewhat similar case, that of *The Genessee*(*u*), where the first salvors, the crews of fishing smacks, rendered what help they could to a vessel which was subsequently saved by a tug, *The Robert Bruce*, the same learned judge, in awarding the first salvors a portion of the salvage, observes : " It is true that the real essential service of bringing the vessel away from the spot she was in was performed by *The Robert Bruce*, and it is equally true that the rigging of the jury-mast, and the getting of an anchor and cable, turned out to be of no importance, inasmuch as *The Robert Bruce* could at once render assistance ; but it is a very different question, in my opinion, where salvors have exerted themselves for the preservation of a ship and cargo, at the risk of their lives, and that under circumstances in which it might be impossible to obtain a steamer, to say that the great merit in this case belonged to the steamer.

. . . . I have thought it right to notice this, in order to encourage salvors, wherever they can, to resort as speedily as possible to the employment of steamers, because I believe the lives of the persons on board, and the property, are far more likely to be saved by that means. If I were to deprive salvors of their reward, because the end of a service was completed by a steamer, I think I should do mischief to the real interests of the commerce and navigation of the country."

In the case of *The Jonge Bastiaan* (*x*), where a vessel was found by salvors stuck fast upon a rock, her bottom beaten in, and her rudder lost, and they succeeded in warping her off, and keeping her afloat sufficiently long to enable some of her cargo, which was bullion, to be got out of her, and she then sank, and the salvors left, and on returning found that a second set of salvors had weighed her, and were rescuing the remainder of her cargo; both sets of salvors were held entitled to salvage, and to an equal amount (*y*). CHAP. III.

#### *Distribution between Rival Salvors.*

It has been held in America, that where salvors fall into distress, and are, together with the salved property, saved by another vessel, the second salvors, in such a case, are entitled to a portion, but not the whole American cases of salvors falling into distress, and saved by others. of the salvage reward (*z*); and the same Courts have also held, that if the second salvors make it a condition of their rendering assistance, that the first set shall abandon their claims to salvage, such a bargain would, in the awarding of the remuneration, be disregarded by the Court (*a*).

Where there are different sets of salvors acting independently of each other, the misconduct of one set will not affect the claims of the other, if they Misconduct of one set does not affect others.

(*x*) 5 C. Rob. 322.

(*y*) See also *The Santipore*, 1 Spinks, 231; *The Magdalen*, 31 L. J. 22; *The Atlas*, Lush. 518; *The Genessee*, 12 Jurist, 401; *The Endeavour* (*Colby v. Watson*), 6 Notes of Cases, 56; *The Albion*, 3 Hagg. 254. See also the American cases, *The Brothers*, Bee, 136; *The Island City*, 1 Black. 121; *The Underwriter*, 4 Blatch. C. C. 94.

(*z*) *The Eubank*, 1 Sumner, 400.

(*a*) Judgment of Story, J., *The Eubank*, *ubi supra*.

C<sub>H</sub>A<sub>P</sub>. III. had no participation in it. In the case of *The Neptune* (*b*), a consolidated action by two sets of salvors, consisting of the crews of some smacks, for salvage rendered to a foreign ship in getting her off the Long Sand, was dismissed, on the ground that the first salvors, who had boarded the vessel prior to her striking upon the sand, had acted erroneously in letting go the anchor instead of putting the vessel into stays, and had, in fact, caused the vessel to go aground. The second salvors, on a subsequent application to the Court, were awarded salvage, having proved that they came up and rendered assistance after the vessel was upon the sand, and that they had not recognised the acts done on board the vessel previous to the commencement of their service.

Apportionment between different sets of salvors.

In the event of more than one set of salvors being held entitled to participate in the sum awarded, the apportionment between them rests in the discretion of the Court, and will mainly depend upon the nature of the exertions made, the danger incurred, and the extent of the benefit conferred upon the vessel saved.

In *The Endeavour* (*c*), where salvage was claimed by one set of salvors for getting a vessel off the sand, and by another set for getting up her anchors (which had slipped) after she was clear of the sand, the Court held that the salvors of the anchors were

(*b*) 1 W. Rob. 297.

(*c*) 6 Notes of Cases, 56. For instances of apportionment between different sets of salvors, see *The Santipore*, 1 Spinks, 231; *The Magdalen*, 31 L. J. Ad. 22; *The Pickwick*, 16 Jurist, 669; *The Jonge Bastiaan*, 5 C. Rob. 323; *The Genessee*, 12 Jurist, 401. See also, title "Apportionment," *post*.

not entitled to share in the general salvage of the vessel. CHAP. III.

A not very dissimilar question arose in the American case—"A Box of Bullion" (d). In that case the American ship *Constitution*, being in distress at sea, her crew and a box of bullion were taken off by the Danish vessel, *Urania*. Three days afterwards *The Urania* fell in with *The Constellation*, a vessel bound to the United States, and transferred to this vessel the crew of *The Constitution* and the bullion. On a suit for salvage being brought, it was held that *The Constellation* was only entitled to a *quantum meruit* for the carriage of the gold, and that the taking of the box on board was not a continuation of the salvage service of *The Urania*, and did not confer upon her any of the rights of that vessel.

(d) 1 Sprague, 57.

## CHAPTER IV.

### AMOUNT OF SALVAGE.

#### *Principles Regulating.*

CHAP. IV.

General principles regulating amount of salvage.

THE amount to be awarded to salvors rests entirely in the discretion of the Court, and depends upon the circumstances of each case (*a*). Although, as will readily be seen, no fixed rule can be laid down upon the subject (*b*), still there are certain general principles which influence the Court in fixing the amount to be awarded, and to which it is desirable to direct attention.

The Court, as a general rule, will take into consideration all the facts of the case, the state of the weather at the time the services were rendered, the degree of damage, and danger to the ship and cargo, the risk and peril incurred by the salvors, the time occupied, and the value of the property. The amount awarded generally far exceeds a mere remuneration for work and labour, the excess being intended upon

(*a*) By sect. 458, of 17 & 18 Vict. c. 104, it is provided that a reasonable amount of salvage shall be payable, but what is a reasonable amount is of course to be determined by the Court.

(*b*) *The Cuba*, 1 Lush. 15. “The amount of salvage reward due is not to be determined by any rules; it is a matter of discretion, and probably in this or in any other case no two tribunals would agree.” Per Dr. Lushington.

principles of sound public policy, not only as a reward to the particular salvor, but as an inducement to others to undergo risk and peril in the rescue of property in danger (*c*).

The Court will not, however, fail to guard against exorbitant demands, and an undue advantage being taken of distress (*d*).

In the American case, *The Blaireau* (*e*), Chief Justice Marshall lays down the same principle in fuller terms. "If," says the Chief Justice, "the property of an individual on land be exposed to the greatest peril, and be saved by the voluntary exertions of any person whatever; if valuable goods be rescued from a house in flames, at the imminent hazard of life, by the salvor, no remuneration in the shape of salvage is allowed. The act is highly meri-

American decisions on  
salvage awards.

(*c*) Judgment of Sir John Nicholl, *The Industry*, 3 Hagg. 203, 204. See also *The Clifton*, Id. 117, where the same learned Judge, p. 121, observes:—"The ingredients of a salvage service are, first, enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives to save their fellow-creatures and to rescue the property of their fellow-subjects; secondly, the degree of danger and distress from which the property is rescued—whether it were in imminent peril and almost certainly lost, if not at the time rescued and preserved; thirdly, the degree of labour and skill which the salvors incur and display, and the time occupied. Lastly, the value. Where all these circumstances concur, a large and liberal reward ought to be given; but where none, or scarcely any, take place, the compensation can hardly be denominated a salvage compensation; it is little more than a mere remuneration *pro opere et labore*." See also *The Otto Hermann*, *The Albert*, *The Ella Constance*, 33 L. J. Ad. 189, 190.

(*d*) Per Sir John Nicholl, *The Hector*, 3 Hagg. 90—95. See also *The Sarah*, 1 C. Rob. 313, n.; *The Wm. Beckford*, 3 C. Rob. 355; *The Fusileer*, 10 L. T. N. S. 699; Marvin on Wreck and Salvage, p. 106; and the following American cases: *The Emulous*, 1 Sum. 216; *The Henry Eubank*, Id. 400; *Fretz v. Bull*, 12 How. 466; *The Genesee Chief*, Id. 443

(*e*) 2 Cranch. 266.

CHEP. IV. torious, and the service is as great as if rendered at sea, yet the claim for salvage could not perhaps be supported. It is certainly not made. Let precisely the same service, at precisely the same hazard, be rendered at sea, and a very ample reward will be bestowed in the courts of justice. If we search for the motives producing this apparent prodigality in rewarding services rendered at sea, we shall find them in a liberal and enlarged policy. The allowance of a very ample compensation for these services, one very much exceeding the mere risk encountered and labour employed in effecting them, is intended as an inducement to render them, which it is for the public interests, and for the general interests of humanity, to hold forth to those who navigate the ocean. It is perhaps difficult on any other principle to account satisfactorily for the very great difference which is made between the retribution which is allowed for services at sea and on land. Neither will a fair calculation of the real hazard or labour be a foundation for such difference, nor will the benefit received always account for it " (f).

(f) See also the instructions to Receivers of Wreck issued by the Board of Trade, where the ingredients of a salvage service are thus described. 1865, Art. 94 and 94a :—

1. The degree of danger from which the lives or property are rescued.
2. The value of the property saved.
3. The risk incurred by the salvors.
4. The value of the property by the use of which the services are rendered, and the danger to which it is exposed.
5. The skill shown in rendering the service.
6. The time and labour occupied.

\* \* \* \* \*

The risk incurred by the salvors themselves, if necessarily incidental to the performance of the service, is the most im-

In estimating the value of the services rendered by the salvors, the Court looks to the exertions actually made, and the peril to which the property saved was subject. It will not take into consideration exertions that might have been required or danger that might have subsequently arisen if the salvage had been effected at a later period. "Subsequent perils and storms," observes Mr. Justice Story (*g*), "may enter as an ingredient into the case when they were foreseen, to show the promptitude of the assistance, and the activity and sound judgment with which the business was conducted, but they can scarcely avail for any other purpose. Ought the salvage to be diminished by a favourable state of the weather after the arrival in port? If not, why should it be increased by an unfavourable state of the weather? To introduce such ingredients into the estimate of salvage, which were neither foreseen nor acted upon, would compel the Court to deliver itself over to conjectures resting on loose probabilities, the nature and extent of which could never be measured. It would be to go off soundings, to desert facts, and to be

How far  
subsequent  
storms are  
to be taken  
into considera-  
tion.

portant ingredient in estimating the amount of salvage to be awarded. The value of human life is that which is and ought to be principally considered in the preservation of other men's property; and if this be satisfactorily proved to have been hazarded, the salvors should be most liberally rewarded, and where not only risk has been incurred, but actual loss of life has ensued, a still larger amount of salvage should be given. In estimating the degree of danger, regard should be had to the damage sustained by the vessel itself, the nature of the locality from which she was rescued, the season of the year when the services were rendered, and if the weather at the time was not tempestuous, the probability or improbability of its becoming so, ignorance or knowledge, as the case may be, on the part of the master or other person on board the vessel.

(g) *The Emulous*, 1 Sumner, 216.

CHAP. IV. guided by speculations always questionable, and sometimes deceptive" (*h*).

Liberal reward for life salvage. Salvors who preserve human life are entitled to be liberally rewarded, and in determining the amount to be paid them, the degree of peril to which they and the persons whom they saved were exposed, is to be taken into consideration (*i*). In giving judgment in the case of *The Thomas Fielden* (*k*), Dr. Lushington observes, "I hesitate not to say that however great may be the danger to the property itself, if it is wholly unattended with risk to human life, it assumes much less value than under circumstances where human life is put in peril. . . . The time is of no consequence. I have even held the opinion that when once I can come to the conviction that human life has been at stake, even for a short time, it is the duty of the Court amply to reward the persons concerned, and for obvious and plain reasons; first, because from the necessity of the case, a very great reward should be given wherever there has been a sacrifice of human life; and secondly, that human life is above all other considerations, and ought never to be exposed to unnecessary hazard and risk."

Reward where salvage combines life and property.

When there is a joint salvage, a vessel saving life as well as property, has been awarded a higher remuneration than one saving property only (*l*).

(*h*) See also *Talbot v. Seeman*, 1 Cranch. 1; *The Versailles*, 1 Curteis, 360; *The Brig Alphonso*, Id. 378; *The Independence*, 2 Id. 350.

(*i*) *The Eastern Monarch*, Lush. 81.

(*k*) 32 L. J. Ad. 61.

(*l*) *The Clarisse*, Swa. 129. See also *The Coromandel*, Swa. 205; *The Bartley*, Id. 198; *The Alma*, Lush. 378.

Where the vessel salved is a steam-boat carrying passengers, the reward is not to be estimated by the same considerations of value as are applied to other vessels. Such vessels make large profits, and are not to pay for salvage services as if they were only carrying ballast. "Humanity," observes Sir John Nicholl (*m*), "requires that every possible encouragement in the way of liberal reward should be given, in order to induce a prompt and efficient assistance to these vessels, and that the reward should be beyond a mere proportion of the value as in ordinary cases" (*n*).

Steamers, in consequence of the cost at which they are fitted up, the power which they possess of performing salvage services with much greater celerity than other vessels, and under circumstances in which no other assistance could prevail, and the greater safety to the salved vessel which attends their services, are generally entitled to greater salvage reward than other vessels (*o*); and this is especially so where a steam vessel is solely built for and devoted to salvage services, and depends entirely on her chances for public encouragement and support (*p*).

Where the time occupied by a steamer in render-

(*m*) *The Ardincaple*, 3 Hagg. 151—153; *The London Merchant*, Ibid. 394—400.

(*n*) As to suits for salvage services rendered to ships of war, see *The Prins Frederik*, 2 Dods. 451; *The Comus*, Ibid. 464; and the American cases, *The Exchange*, 7 Cranch. 116; *The Thomas A. Scott*, 10 L. T. N. S. 726.

(*o*) *The Kingalock*, 1 Spinks, 263—267; *The Alfen*, Swa. 189, 190; *The Raikes*, 1 Hagg. 246; *The London Merchant*, 3 Hagg. 394; *The Earl Grey*, Ibid. 363; *The Perth*, Ibid. 414; *The Shannon*, 11 Jur. 1045; *The Graces*, 2 W. Rob. 294.

(*p*) *The Mary Anne*, (Irish), 11 L. T. N. S. 85.

CHAP. IV.

ing salvage service is of limited duration, that circumstance of itself will not operate against the claim of the salvors (*q*).

Where a steam vessel is summoned by signal or otherwise to the assistance of a vessel in distress, she is to be remunerated for the distance she may come in order to reach the vessel (*r*).

By passenger ship.

Where the salving vessel is a passenger ship, the Court, in estimating the amount of salvage to be awarded, will take into consideration the nature of the vessel's employment (*s*), and the great responsibility which the master of such a vessel takes upon himself in delaying the prosecution of his voyage (*t*).

Value of  
salvor's pro-  
perty.

Where ships' boats or other property are employed in connection with the salvage service, the value of that property is to be taken into consideration in fixing the compensation of the salvors (*u*). The fact that such property may be of trifling importance, does not necessarily detract from the value of the salvage service, whilst the placing of valuable property in peril does undoubtedly enhance its merit (*x*).

Compensa-  
tion for  
damage to  
salving  
vessel.

In cases where the salving vessel has sustained damage or loss in rendering salvage services, the Court has frequently, in addition to the salvage, awarded a reasonable compensation for the damage, and for the loss of the ship's services whilst under-

(*q*) Judgment of Dr. Lushington, *The Andalusia*, 12 L. T. N. S. 584.

(*r*) *The Graces*, 2 W. Rob. 294—300.

(*s*) *The Vanguard*, 5 Irish Jur. N. S. 364.

(*t*) *The Ella Constance*, 33 L. J. Ad. 189—192.

(*u*) *The Fusileer*, B. & L. 341.

(*x*) *Ibid.*

going repairs (*y*) ; and where such a vessel is injured or lost whilst engaged in the salvage service, the presumption is that the injury or loss was occasioned by the necessities of the service, and not by the default of the salvors, and in such a case the burden of proof lies upon the defendants who allege that the loss was caused by the salvors' own acts (*z*).

In *The Jane* (*a*), a south-sea whaler, which had been detained in consequence of salvage services rendered by her, was decreed additional compensation to cover the risk, damage, and expense which she had incurred; and in *The Salacia* (*b*), compensation was in the same way awarded to a vessel engaged in the sealing trade, for the loss of the sealing season. In *The Howth-andel* (*c*), the loss of a quantity of ice with which the salving vessel was laden, was taken into consideration in awarding the salvage.

Where any payments have been made or are claimed by the shipowner in respect of the damage or detention of the salving vessel, they should be stated in the petition, that they may, if reasonable, be allowed against the defendants, or the Court will not afterwards take the payments into account as against the other claimants in apportioning the salvage (*d*).

If a fishing vessel should interrupt a lucrative employment for the purpose of rendering salvage

Payments,  
&c., by  
owner to be  
stated in  
petition.

Compensa-  
tion for loss  
of fishing.

(*y*) *The Spirit of the Age*, Swa. 286; *The George Dean*, Ibid. 290; *The Saratoga*, Lush. 318; *The Eleanore*, Br. & L. 185; *The Martha*, 3 Hagg. 434. See also *The Cornelius Grinnell* (American), 11 L. T. N. S. 278.

(*z*) Judgment of Dr. Lushington, *The Thomas Blyth*, Lush. 16.

(*a*) 2 Hagg. 338.

(*b*) Ibid. 262.

(*c*) 1 Spinks, 25.

(*d*) *The Wigtownshire*, 36 L. J. Ad. 11.

CAP. IV. service, that fact, and the loss she may have sustained, will form an essential ingredient in the estimate of the award (*e*). In ordinary cases, however, where there is no imminent danger, the Court will lean against the claims of fishermen to be compensated to the full extent of their possible earnings. In *The Nicolai Heinrich* (*f*), Dr. Lushington is thus reported: "The Court has to consider what has been the loss which the salvors have experienced in deserting their occupation of fishing and rendering this service. This latter circumstance is one to be treated with some tenderness, but the principle of taking into account the loss they have sustained is not to be carried too far. I entirely agree with an observation made by counsel on that point, that if the representation of the salvors as to the great loss they have suffered is true, considering the services they were called upon to render, they ought not to have taken charge of the vessel without having stated to the captain the sum they would ask. I wish it to be distinctly understood, as these cases seem to be multiplying, that if persons engaged in fishing are to be employed in a service of this description, which is not really important, and afterwards think they can induce the Court to give them any possible amount of profit which they think they might have acquired, they had better go on with the latter, and not afford their services. In cases of imminent danger, whatever amount of gain they would have acquired by fishing would undoubtedly be taken

(*e*) *The Louisa*, 3 W. Rob. 99.

(*f*) 17 Jur. 329.

into consideration, but not in cases such as that CHAP. IV.  
now before me."

The damage must not be too remotely connected with the salvage. In the American case, *C. Grinnell*, the salving steamer was, in consequence of the time that the salvage occupied, delayed in the subsequent prosecution of her voyage at a dangerous place about low water, which, but for that delay, she would probably have reached about high water, and have passed in safety, but under the circumstances she struck on a rock, and was seriously injured; the Court held the damage too remote to be considered as an element in estimating the amount of salvage (g).

It was formerly laid down that in awarding salvage the Court would not take into consideration any risk which the owner of the salving vessel underwent of having his policy of insurance vitiated in consequence of a deviation by her, but would consider every vessel as uninsured (h). In more recent cases,

(g) *The Cornelius Grinnell* (American), 11 L. T. N. S. 278. See also *The Mulgrave*, 2 Hagg. 77, where the owners of a salving vessel, which had agreed to accept a fixed sum for her services, were held not to be entitled to remuneration for loss on the cargo (fish) occasioned by delay, caused in fulfilling the agreement.

(h) *The Deveron*, 1 W. Rob. 180. See also *The Jane*, 2 Hagg. 338; *The Orbona*, 1 Spinks, 161; *The Beaver*, 3 C. Rob. 292; *Laurence v. Sidebotham*, 6 East, 45; *The Medora*, *The Jeanette*, *The Arabian*, Pritchard's Digest, 835; and Arnold on Marine Insurance, 3rd edition, by Mr. David McLachlan, pp. 477, 478, where the law as to the effect of a deviation to succour distress is thus laid down:—"A doubt, dishonourable to the jurisprudence of Christian communities, appears for some time to have prevailed both in this country and in the United States, whether a departure from the direct course of the voyage for the purpose of saving the lives of men threatened with an imminent danger of shipwreck or foundering, was or was not a deviation which would discharge the

Remoteness  
of damage.

CHEP. IV. however, the Court has not recognised this doctrine, but has taken into consideration risks of this nature as materially affecting the proportion of salvage to be awarded to the owner. Thus, in the case of *The Sir Ralph Abercrombie* (*i*), where the owners of an insured vessel claimed an increase of the share of salvage apportioned them, on the grounds, that the insurance had been jeopardised by the deviation of the vessel, that there was a possibility of their becoming liable to the owners of the cargo for the deviation,

underwriters ; it must now, however, be taken as clear law, both on this and the other side of the Atlantic, that a deviation of this kind, sanctioned alike by the true interests of commerce and the clearest principles of humanity, can in no instance be held to discharge the underwriters. This liberty, however, has been expressly confined in the United States to those cases only in which the object of the deviation is the preservation of human life, and it has been held not to extend to the saving of property. I apprehend the law will be found the same in this country." It appears, however, to be doubtful whether the Courts of this country will recognise the distinction pointed out by Mr. McLachlan. In a recent case (*The Thetis*, L. R. 2 Ad. 365), Sir Robert Phillimore, in referring to the subject, is reported (p. 368) to observe :—"It has been urged upon me that the act of the master in this case could not have been within the scope of his commission, and was not for the benefit of the owners, because a deviation for the purpose of rendering salvage service to property would, upon general principles, avoid a policy of insurance ; but that is an undecided and very doubtful proposition of English law, and certainly one to which I cannot give my assent. It was at all events pronounced by the Privy Council in 1866 to be an undecided point of law (*The True Blue*, L. R. 1 P. C. C. 254, 255). I am aware that the American Courts appear to have made a distinction between a deviation for the purpose of saving life and for that of saving property ; it is perhaps not quite so certain, however, as generally supposed, that such a distinction has been finally established." See, on the same subject, the American cases, *The Boston*, 1 Sum. 328 ; *The Eubank*, Ibid. 400 ; *The Nathaniel Hooper*, 3 Ibid. 535, 578 ; *The Blaireau*, 2 Cranch. 240 ; *The Brig Cora*, 2 Wash. 80—86 ; *Williams v. A Box of Bullion*, 6 American Law Rep. 363.

(i) L. R. 1 P. C. 454.

aud that the ship was endangered by being left short-handed, in consequence of a portion of her crew having been placed on board the vessel saved—the Court, upon these grounds, increased the sum apportioned to the owners from £600 to £2000. Dr. Lushington, in giving judgment, observing (*j*) : “ We think it is quite right that the claims of the owners should be considered, not only on account of the doubt whether the insurance might not be vitiated, and whether the owners of the ship might not become responsible to the owners of the cargo for the acts of their servants in deviating from their course to render the assistance, and weakening the crew, but also for the risk to which their property has been exposed in rendering the service, and which in justice ought to be made good to them ” (*k*).

The question discussed above will not, of course, arise where, as frequently happens, the policy of assurance contains a clause giving leave to the insured vessel to tow and assist vessels in all situations.

Where the ship saved is derelict, it has been the uniform course to give more than in ordinary salvage cases, but upon the same principle that is applied to other cases, namely, the dangerous condition of the property. Derelict, like other salvage cases, are to be governed by the value, risk of life, damage to the property, skill, labour, and duration of service (*l*). In *The True Blue* (*m*), Dr. Lushington is thus reported: “ Now, in truth and in fact, when the Court

(*j*) P. 461.

(*k*) See also *The Scindia*, L. R. 1 P. C. 241—246; and *The Aletheia*, 13 W. Rep. 279.

(*l*) *The True Blue*, L. R. 1 P. C. 250—256.

(*m*) *Ubi supra*.

CHAP. IV. comes to consider the question of derelict or not, it takes into consideration the danger to the property, and it does so when the vessel is not derelict; the property may be in infinite danger though it is not derelict, but the Court always considers that one of the material ingredients upon which it gives a large salvage is the danger to the property, and the danger may be [we do not say that it is, but the danger may be], and in certain cases of salvage it is as great to the property which is not derelict, as it is in other cases where the property is derelict. Therefore the proper course to pursue in all these cases, is to consider the fact of derelict as being, as it were, an ingredient in the degree of danger in which the property is" (n).

It was anciently the practice of the Court to award to salvors a moiety of the property found derelict, but for a long time this practice has been departed from, and the amount rests, as in other cases, in the discretion of the Court, and does not necessarily bear any fixed proportion to the property salved, but is regulated upon the principle of giving an adequate reward according to the circumstances of the case (o). The Court has, however, in cases

(n) See also *The Sarah Bell*, 4 Notes of Cases, 144; *The Florence*, 16 Jur. 572—578.

(o) "It is a suggestion of common reason, that where the property is very large, a smaller proportion may afford adequate remuneration, and as that is the only true measure of reward, it is absurd to assign fixed proportions, which must operate very differently according to difference of value. . . . The rule of proportion, therefore, is a rule which this Court has not recognized, and will not adopt on any recommendation. The question will resolve itself into the consideration of circumstances attending the particular case. When the amount of the reward is so fixed it will be seen what is the proportion, and it may be expressed in popular language, but the case must be substantially determined on more particular considerations than those

of derelict, on many occasions given a proportion of one-half or one-third of the property salved to the salvors (*p*), and where the property was of small value, and no owner appeared, it has even directed that the whole sum at which it was sold should be divided among them (*q*).

There does not appear to be any instance, except in cases of derelict, where the salvors have been decreed a sum exceeding a moiety of the proceeds (*r*).

Although salvors are entitled to no specific proportions of the property saved (*s*), and although the remuneration for the service is not measured by the value of the property, but with reference to all the circumstances of the case, and especially with reference to any risk there may have been to human life (*t*), the value of the property nevertheless may materially affect the sum to be awarded.

CHAP. IV.

Proportion  
of salvage to  
property  
saved.

The Court will take into account the fact that the

of proportion." Per Sir C. Robinson, *The Salacia*, 2 Hagg. 262. See also *The Aquila*, 1 C. Rob. 37; *The Florence*, *ubi supra*; *The Effort*, 3 Hagg. 165; *The Thetis*, 2 Knapp. 409; *The Minerva*, 1 Spinks, 271; *The Magdalen*, 5 L. T. N. S. 807; *The Berlin*, 4 Irish Jur. 11; *The Jane*, 5 Irish Jur. 31; *The Martin Luther*, 12 L. T. N. S. 585; *The Vesta*, 2 Hagg. 189; *The Oscar*, Ibid. 260.

(*p*) *The Cargo ex Venus*, L. R. 1 Ad. 50, 51; *The Esperance*, 1 Dods. 46; *The Norma*, Lush. 124; *The Blendenhall*, 1 Dods. 414—423; *The Frances Mary*, 2 Hagg. 89; *The Reliance*, Ibid. 90, n.; *The Elliotta*, 2 Dods. 75; *The Atlas*, Lush. 518—530; *The Ewell Grove*, 3 Hagg. 209—221; *The Sansome*, 3 Irish Jur. 58; *The Jubilee*, 3 Hagg. 48, n.; *The Jonge Bastiaan*, 5 C. Rob. 322; *The Fortuna*, 4 C. Rob. 193; *The Mary Anne* (Irish), 11 L. T. N. S. 85.

(*q*) *The Castletown*, 5 Irish Jur. 379. See *The Rutland*, 3 Ibid. 283; *The William Hamilton*, 3 Hagg. 168, n.

(*r*) *The Inca*, Swa. 370.

(*s*) *The Thetis*, 3 Hagg. 14; *The Salacia*, 2 Hagg. 262.

(*t*) *The James Dixon*, 2 L. T. N. S. 696; *The Thomas Fielden*, 32 L. J. Ad. 61.

CHAP. IV. owners are benefited in proportion to the value of the property, and when it is large, the remuneration is relatively great, not only in consequence of its being less felt by the owners, but because on many occasions, where the property is small, salvors perform great services without adequate remuneration (*u*).

How value ascertained. In ascertaining the value of the ship and cargo, the general rule is that the valuation shall be taken at the port into which the ship is carried. Where, however, salvage services were rendered to a vessel bound for London, and she was carried into Lisbon, and her cargo, which was unsaleable there, was subsequently transhipped and sent to London, it was held that the proper method of arriving at the value of the cargo at Lisbon, would be by putting it at a per centage less than the proceeds of its sale in London, and deducting the freight and charges for the voyage from Lisbon to London, but allowing a *pro rata* freight as far as London (*x*).

Value, when to be taken. The value of the property is also to be taken at the time when the vessel was first brought into safety, and not at any subsequent period; and where a vessel and cargo, although worth more than £1,000 when first carried into port, in consequence of mismanagement realised barely more than half that sum, the salvors were held to be entitled, in a question as to jurisdiction, to take the larger sum as the value (*y*).

(*u*) *The Earl of Eyclinton*, Swa. 7; *The Ewell Grove*, 3 Hagg. 209; *The Raikes*, 1 Hagg. 246; *The Hector*, 3 Hagg. 90; *The Syrian*, 14 L. T. N. S. 833.

(*x*) *The George Dean*, Swa. 290. See also *The Norma*, Lush. 124; *The Progress*, Edwards, 210; *The Cargo ex Lodianah*, 2 Prit. Ad. Dig. 736.

(*y*) *The Stella*, L. R. 1 Ad. 340.

In estimating the salvage upon freight, where the services of the salvors terminate before the completion of the voyage, the Court will treat the freight as divisible, and as though a *pro rata* freight were payable at the intermediate port. This question was discussed in the case of *The Norma* (z), where a vessel bound from Honduras to London was towed into Bermuda by salvors, and there the Court allowed salvage upon one half of the total gross freight. In the course of his judgment in that case, Dr. Lushington made these observations: "The gross freight received was £2210; the Bermuda expenses, including detention and other charges, amounted to £1822. Upon this state of facts the salvors contend that they are entitled to salvage upon the whole £2210. The owners say that the freight must be taken at Bermuda, where none was payable, or that if that position is not to prevail, and the salvors must be allowed salvage on part freight, no such part exists, for the whole freight has been swallowed up by the expenses of earning it. . . . Now it is certainly quite true that at Bermuda, as between the owner of the ship and the shipper of the goods, no freight was earned. But I do not think that this is at all conclusive against the salvors. It is quite necessary, as the Queen's Advocate has observed, in order to hold persons to their engagements, to require, where a contract is entire in its nature, entire performance as a condition precedent to any right of payment; the contract of freight is emphatically a contract of this kind, and freight, therefore, is not properly earned (except under circumstances implying a new contract),

(z) Lush. 124.

CHAP. IV. until the cargo is sold at the port of destination. But in salvage we have to decide on purely equitable principles, and the question is not so much what freight was earned at Bermuda, but what services in respect of the contract for freight the salvors had then rendered. Judging by this test, the salvors are entitled to salvage upon a considerable part of the total freight, for it is clear that a large portion of the voyage had been performed before the salvage services, and that the entire benefit of so much was preserved to the shipowners by the salvors, not indeed absolutely, for expenses had to be incurred, and the perils of the voyage from Bermuda home had yet to be undergone, but preserved from immediate and total loss. I do not think it necessary to enter into a detailed calculation upon this question of the value of the salvors' services to freight—how far the Bermuda expenses are to be taken into account, what items are proper items of deduction, and so on. My judgment must, after all, be a *rusticum iudicium*. It is enough to say that the services of the salvors in respect of freight were considerable. I shall reckon the value of the freight saved at £1000."

<sup>Expenses to be deducted.</sup> In ascertaining the net value of the property, all necessary sale expenses, and the usual allowances in respect of cargo and freight, and, as a general rule, expenses by which all parties interested in the cargo are benefited, are to be deducted from the gross value (a). On the other hand, a bottomry bond executed, necessaries supplied, or wages due before the

(a) *The Peace*, Swa. 115; *The Hebe*, 7 Notes of Cases, Supp. 13; *The Paul*, L. R. 1 Ad. 57; *The Samuel*, 15 Jur. 407.

salvage was rendered (*b*), money paid on account of freight (*c*), or for prime or insurance, or for the expenses of prosecuting persons who had forcibly dispossessed the salvors (*d*), will not be proper deductions.

Where, however, a bottomry bond was given, and wages were earned subsequently to the salvage, they were both held to be proper deductions from the value of the property as against the salvors (*e*).

Whenever any salvage question arises, the Receiver of Wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and when the valuation has been returned to him, he is to give a copy of it to both parties, and a copy of the valuation, purporting to be signed by the valuer, and to be attested by the Receiver, is to be received as evidence in any subsequent proceeding (*f*).

If the vessel and cargo be arrested, the salvors are entitled to have their value ascertained by appraisement of the Marshal of the Court of Admiralty before the property leaves the custody of the Court (*g*). If, however, the appraisement does not show a greater value than that stated by the owners, the Court will

(*b*) *The Hebe*, 7 Notes of Cases, Supp. i—iii.; *The Sabina*, 7 Jur. 182.

(*c*) *The Fleece*, 3 W. Rob. 278—282; *The Charlotte Wylie*, 5 Notes of Cases, 4; *The Westminster*, 1 W. Rob. 229—233; *The Norma*, 1 Lush. 124; *The Fusilier*, 10 L. T. N. S. 699; *The Peace*, Swa. 115.

(*d*) *The Fleece*, *ubi supra*, p. 281.

(*e*) *The Selina*, 2 Notes of Cases, 18.

(*f*) 25 & 26 Vict. c. 63, s. 50.

(*g*) Coote's Admiralty Practice, p. 49; *The Charlotte Wylie*, *ubi supra*; and see also Ad. Rules, 50.

CHAP. IV. direct the costs to be borne by the salvors (*h*); and it will only allow the salvors the costs of the appraisement when the value stated by the owners is wholly below the real value ; and will not regard the fact that the appraisement exceeds the value stated by the owners by a few pounds (*i*).

Appraise-  
ment final.

Where the Marshal has once made his appraisement, the Court will not afterwards disturb it, and has refused to do so where the cargo, appraised at £1900, realised on being sold only £1295, out of which £272 was to be deducted for expenses (*k*).

Appraise-  
ment in  
County  
Court suits.

In an Admiralty suit in the County Court, the Registrar may, upon the application of either attorney, and before or after judgment, order any property under arrest to be appraised (*l*).

#### *Agreement as to amount.*

Agreement  
to render  
salvage ser-  
vices for a  
fixed sum.

It is perfectly competent for salvors, instead of leaving the amount of their remuneration to be determined by the Court, to agree with the master of the vessel in distress to render the required assistance for a specified sum; and in such a case they will be bound by their contract, and can claim no

(*h*) *The Persian*, 1 Notes of Cases, 304. See *The Mary and Jane*, L. R. 2 Ad. 345 ; *The Rapid*, 18 W. R. 150.

(*i*) *The Commodore*, 1 Spinks, 175, n. See *The Hope*, 14 W. R. 467, where in salvage proceedings before the Commissioners of the Cinque Ports, the owners represented the value of the cargo saved to be 2000*l.*, and the salvors tacitly assented. On subsequently discovering that the cargo had been declared at the Custom House to be of the value of 8900*l.* the Court, on the motion of the salvors, who were appealing, directed the defendants to prove the value of the vessel, as also the quality, quantity, description, and value of the cargo.

(*k*) *The Cargo ex Venus*, L. R. 1 Ad. 50. See also *The R. M. Mills*, 3 L. T. N. S. 513.

(*l*) County Court Rules, No. 54.

more than the stipulated amount (*m*). To render such an agreement binding, however, it is necessary that it should be clear and explicit in its terms (*n*). It need not necessarily be in writing (*o*), but whilst a *vivâ voce* agreement if sufficiently proved is binding, the Court will be unwilling to act upon it unless it consist of more than loose conversations (*p*), and depend upon something more than the recollection of what occurred in the course of such conversation (*q*).

The agreement must also state the sum agreed to be paid (*r*); in fixing the sum, however, the salvors are entitled to look only at the extent of danger to which the property is exposed, the degree of labour they will have to undergo, the length of time they may be occupied, and the risk to which they may be exposed; they have no right to speculate as to the value of the cargo, and even if it be falsely represented by the master as being of much less value than it actually is, the agreement will nevertheless be upheld (*s*).

With regard to the condition of the vessel, how- But no con-

Value of  
cargo does  
not affect  
agreement.

(*m*) *The True Blue*, 2 W. Rob. 176. Dr. Lushington: "I entertain no doubt whatever that an agreement of this description can be legally made between a master of a vessel in distress and persons affording a salvage assistance, provided there be a clear understanding of the nature of the agreement, that it is made with fairness and impartiality to all concerned, and that the parties to it are competent to form a judgment as to the obligations to which they are binding themselves."

(*n*) *The Graces*, 2 W. Rob. 294; *The William Lushington*, 7 Notes of Cases, 361.

(*o*) *The Firefly*, Swa. 240.

(*p*) *The Salacia*, 2 Hagg. 262—265.

(*q*) *The Jane Anderson*, 3 Irish Jur. 293; *The Briton*, 5 Ibid. 179.

(*r*) *The William Lushington*, 7 Notes of Cases, 361.

(*s*) *The Henry*, 15 Jur. 183, 184.

CHAP. IV. ever, although the master before entering into the concealment of condition of ship allowed.  
agreement is not obliged to point out every circumstance that has occurred during the voyage (*t*), there should be no concealment, as the suppression of any facts which might affect the service, and therefore have operated upon the agreement at first, may vitiate it (*u*).

Agreement  
is binding  
on parties to  
it only.

The master of the vessel in distress is authorized to bind the owner by a salvage agreement (*x*), unless indeed the owner be at hand at the time, and give him no authority (*y*). If, however, the agreement be tainted with fraud, the Court will refuse to recognise it as against the owner, and has, in more than one instance, set such an agreement aside. In *The Generous* (*z*), where the owner of the vessel in distress appealed from a decision of the justices, the Court there disregarded an agreement which the master had entered into under circumstances which were fraught with suspicion, the master himself deposing that the salvors had promised him £10 to sign the agreement. In *The Crus V.* (*a*), the master of a Portuguese vessel which had gone on shore at Dungeness, not being able to speak English, accepted the services of the district agent of the Portuguese

(*t*) *The Jonge Andries*, Swa. 226, 227.

(*u*) *The Kingalock*, 1 Spinks, 263—265; *The Bruton*, 5 Irish Jur. 170; *The Canova*, L. R. 1 Ad. 56. Dr. Lushington: "If, though unintentionally, there was a concealment of a fact so material that it ought to invalidate the agreement, I should not enforce it."

(*x*) *The Africa*, 1 Spinks, 299; *The Arthur*, 6 L. T. N. S. 556.

(*y*) *The Elise*, Swa. 436. In this case Dr. Lushington doubted whether, under such circumstances, the master had authority to compromise a salvage claim.

(*z*) 2 L. R. Ad. 57.

(*a*) Lush. 583.

Vice Consul, who entered into an agreement for the assistance of a steam-tug for £600, on the condition that £50 should be returned, £40 of which was retained by the agents, £10 going to the master of the tug. Upon a suit being instituted for salvage, the Court set aside the agreement as corrupt, and pronounced for the owner's tender of £250, with costs (*b*).

The Court will also refuse to recognise an agreement where the master improperly or recklessly contracts to pay the salvors an exorbitant demand. In *The Theodore* (*c*), the salvors induced the master of a vessel which had parted from her first anchor and was driving with another anchor down, but was otherwise in no danger, to enter into an agreement to pay them £200 for bringing the vessel into port, which they did after a service of about four hours; the Court held the sum to be an exorbitant one, and pronounced against the agreement, and for the sufficiency of a tender of £50 by the owners.

The Court of Admiralty will also refuse its sanction to agreements for the salvage of the ship irrespective of the cargo on board; and upon such an agreement being proved, it will refuse to pronounce any salvage whatever to be due (*d*).

If, on the other hand, the agreement should be unjust or inequitable towards the salvors, the Court will refuse to recognise it (*e*). And where the owners

(*b*) See *The Repulse*, 2 W. Rob. 396; and the American cases, *Housman v. Schooner North Carolina*, 15 Peters, 40; and *The Ship James*, Marvin, 232.

(*c*) Swa. 351.

(*d*) *The Westminster*, 1 W. Rob. 229, 235.

(*e*) *The Phantom*, L. R. 1 Ad. 58. Dr. Lushington, p. 61: "However much it has been agreed upon by both parties, the Court is in the habit of overruling such an agreement, if it is

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of a vessel to which valuable services had been rendered whilst she was in a position of considerable danger alleged that the salvors had agreed to do the work for 8*s.* 6*d.*, the Court, regarding this amount as futile, gave the salvors £10 and costs (*f*).

Where all  
the salvors  
not parties  
to agree-  
ment.

Although the master of the salving vessel has authority to bind his owner by a salvage agreement (*g*), yet as far as the other salvors are concerned, the agreement only binds such of them as are parties to it. Thus, where an agreement was made by the master of a salving vessel with the owner of the vessel salved as to the quantum of salvage to be paid, it was held to be binding upon the master and his employers, but not upon the crew, it having been made without their sanction or concurrence (*h*); and, on the same principle, an agreement with part of the crew of a salving ship has been held to be not binding upon the others not concurring in it (*i*). And where an understanding was come to between the owners of a vessel salved and the owner of a cutter engaged by them to render the service, and

unjust and inequitable." See also *The William and John*, 9 Jurist, N. S. 284. And see *The Kingalock*, 1 Spinks, 263–265. Dr. Lushington : "It is not necessary in order to vitiate an agreement that there should be moral fraud ; it is not necessary, in order to make it not binding, that one of the parties should keep back any fact or circumstance of importance ; if there should be misapprehension, accidentally or by carelessness, we all know that there may be, what in the eye of the law is termed, equitable fraud."

(*f*) *The Phantom*, *ubi supra*. See *The True Blue*, 2 W. Rob. 176 ; *The Enchantress*, 30 L. J. Ad. 15 ; *The British Empirc*, 6 Jurist, 608 ; *The Firefly*, Swa. 240 ; *The Helen and George*, Ibid. 368 ; *The Resultatet*, 17 Jurist, 353.

(*g*) *The Africæ*, 1 Spinks, 299–300.

(*h*) *The Britain*, 1 W. Rob. 40. See *The Sarah Jane*, 2 W. Rob. 110.

(*i*) *The Sansome*, 3 Irish Jur. 258 ; *The Charlotte*, 3 W. Rob. 68–74.

no specified sum was named in it, it was held not to bar the proceedings of the master and crew of the cutter, who acted under the personal direction of the owner of the cutter, but were not parties to or cognisant of the understanding (*k*).

If a salvage agreement be proved, the Court will uphold it, unless it be clearly inequitable; and it is no answer to the agreement to say, that the bargain is a hard one upon the salvors (*l*); or that greater difficulties than were anticipated, in consequence of the change of weather, attended its performance (*m*); or that the weather became tempestuous; or the vessel was longer in arriving in port than might have reasonably been expected (*n*). Nor, on the other hand, can the owner of the vessel receiving assistance refuse to pay the amount stipulated for, on the ground that the salvage services were attended with less difficulty than had been anticipated, unless indeed the sum happen to be so grossly exorbitant as to amount to evidence of bad faith or fraud, which of themselves would induce the Court to set aside the agreement (*o*).

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That the  
bargain is a  
hard one  
does not  
affect agree-  
ment.

(*k*) *The William Lushington*, 7 Notes of Cases, 361. See also, *The Elise*, Swa. 436.

(*l*) *The Firefly*, Swa. 240. See also *The Helen and George*, Ibid. 368.

(*m*) *The True Blue*, 2 W. Rob. 176-180.

(*n*) Ibid. Dr. Lushington: "It is the very nature of an agreement of this kind to fix a stated sum as a compensation for a stated service, and the parties who enter into the engagement take the risk of any change of circumstances which may affect the service." See also *The Jonge Andries*, Swa. 226. *The Cato*, 35 L. J. N. S. Ad. 116; *The Arthur*, 6 L. T. N. S. 556; *The Nuova Loaneze*, 17 Jur. 263; *The Resultatet*, Ibid. 353.

(*o*) *The Helen and George*, Swa. 368. Dr. Lushington: "The owner may contend that, under the circumstances, the sum of money was grossly exorbitant, and, *à fortiori*, if he can show

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Onus of  
proof of  
agreement.

The burthen of proof of the agreement is on the party setting it up; but when once it is proved the onus is shifted upon those who dispute its validity (*p*).

Abandon-  
ment and  
cancellation.

If a salvage agreement has been cancelled by the mutual consent of the parties, or abandoned by the party setting it up, or if it be so founded in fraud or misrepresentation that the Court would hold it to be void, it will afford no answer on the part of owners to a suit for salvage, or on the part of salvors to a defence of tender (*q*). The party alleging the cancellation of the agreement is bound to prove the fact by a clear preponderance of testimony (*r*).

Agreement  
with ship-  
owner only.

Where the salvors make separate claims against the ship and cargo, an agreement out of Court between them and the owners of the ship fixing the amount of remuneration is not conclusive on the Court in awarding the amount due from the owners of the cargo (*s*).

Payment  
into Court.

Where the owners of the vessel salved set up an agreement in bar of a salvage claim, they must pay into Court the sum stipulated for in the agreement (*t*).

that the agreement was obtained by fraud or compulsion, no Court would hold it to be binding."

(*p*) *The Helen and George*, Swa. 368-370; *The Resultatet*, 17 Jur. 353; *The Nuova Loaneze*, Ibid. 263; *The Arthur*, 6 L. T. N. S. 556; *The Theodore*, Swa. 351; *The Graces*, 2 W. Rob. 294.

(*q*) *The Samuel*, 15 Jur. 407; *The Africa*, 1 Spinks, 299.

(*r*) *The Repulse*, 2 W. Rob, 396-397; *The Betsy*, Ibid. 167-172; *The Samuel*, 15 Jur. 407; *The Africa*, 1 Spinks, 299; *The Crus V*, 1 Lush. 583; *The Theodore*, Swa. 351. See also the following American cases on salvage agreements, *The Emulous*, 1 Sumn. 207; *The A. D. Patchin*, 1 Blatch. 414. *Bearse v. Three hundred and forty pigs of Copper*, 1 Story, 314.

(*s*) *The Emma*, 8 Jurist, 651.

(*t*) *The Catherine*, 6 Notes of Cases, Supp. xlivi.-lii.

## CHAPTER V.

## APPORTIONMENT OF SALVAGE.

WITH respect to the apportionment of salvage, the Merchant Shipping Act of 1854 provides that where the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, either by agreement or award of the justices, but a dispute arises as to the apportionment of it among the claimants, then, if the amount does not exceed £200, the party liable to pay may apply to the Receiver of Wreck of the district for liberty to pay the amount to him, and that the Receiver's certificate shall be a full discharge and indemnity to the person paying; and the Receiver is then to proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any moneys that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this provision is to be final and conclusive against the rights of all persons claiming to be entitled to any portion of the moneys so distributed (a).

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By Receiver  
of Wreck.

(a) 17 &amp; 18 Vict. c. 104, ss. 466, 467.

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Apportion-  
ment by  
Court hav-  
ing Admir-  
alty juris-  
diction.

By a subsequent section it is provided that "whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained and exceeds £200; and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be; then, if any delay or dispute arises as to the apportionment thereof, any Court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just, and may, for that purpose, if it thinks fit, appoint any person to carry such apportionment into effect, and may compel any person in whose hands or under whose control such amount may be to distribute the same, or to bring the same into Court, to be there dealt with as the Court may direct, and may, for the purposes aforesaid, issue such monitions or other processes as it thinks fit" (b).

(b) 17 & 18 Vict. c. 104, s. 498. See also *The Enchantress*, Lush. 93, where Dr. Lushington, after quoting the above section, observes: "I conceive a duty is hereby imposed on me to decree upon application made, what in my judgment is an equitable apportionment of salvage, unless I am barred by one of two circumstances, either an equitable agreement between the parties, or an equitable tender."

By the bill now before Parliament for the amendment of the Merchant Shipping Acts, it is proposed, in lieu of the provisions above set out, to enact, that in cases where the Receiver of Wreck adjudicates upon a salvage claim, he is to apportion it; and in other cases the apportionment is to be made by the Court which decrees the salvage remuneration. Where the amount of salvage is ascertained by admission or agreement, but a dispute arises as to its distribution, then, when the sum is under £30, the apportionment is to be decreed by the Receiver of Wreck, and in cases above £30, by a Court having Admiralty jurisdiction.

In those sections of the Merchant Shipping Amendment Act, 1862, which empower the justices to entertain claims in respect of salvage services rendered outside the limits of the United Kingdom, and enlarge their jurisdiction to cases where the value of the property saved does not exceed £1000, there is no provision which in terms gives a similar extension to the powers of apportionment conferred upon the Receiver of Wreck, and it would seem that his authority is not co-extensive with that of the justices, but is confined within the limits set out in the Act of 1854. With respect to the jurisdiction of the County Court over such claims, however, it will be observed that the words of the 498th section are very large, and embrace "any Court having Admiralty jurisdiction."

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The application for apportionment of salvage Delay. should be made while the circumstances are fresh in the mind of the Court. A person dissatisfied with the tender of apportionment may, however, seek the assistance of the Court within a reasonable time after the salvage has been decreed; and when the applicant is in a humble class of life, the question of time is one that the Court will be indisposed to have pressed against him (*c*). Indeed it is the right of a salvor to have the salvage apportioned by the Court, unless he is shut out by an equitable agreement between the parties, or an equitable tender (*d*).

No action lies at common law for apportionment of salvage; and where salvage had been paid to the master of a vessel that had rendered salvage services,

No action at law for proportion of salvage.

(*c*) *The Spirit of the Age*, Swa. 286, 287.  
 (*d*) *The Enchantress*, 1 Lush. 93.

CHAP. V. and one of the seamen sued the master in a Court of Common Law for his proportion as money received to his use, it was held that the action was not maintainable (e).

### *Proportions Awarded.*

The apportionment of the salvage rests entirely in the discretion of the Court, and no precise rule can be laid down as to the proportions which the Court will allot. Where the salvors are landsmen belonging to the same class of life, and incur the same amount of risk and labour, the salvage is generally apportioned equally between them (f); and in ordinary cases, seamen and apprentices composing the crew of the salving vessel participate in proportion to their wages (g).

Larger proportion to those incurring extra risk.

If, however, any of the salvors, whether landsmen or seamen, have incurred greater risk or rendered greater services than the others, a larger share will be given. In the *Saint Nicholas* (h), where a vessel in distress was taken in tow, a boat's crew from the salving vessel having at great peril been sent on.

(e) *Atkinson v. Woodhall*, 1 H. & C. 170.

(f) Art. 97, Board of Trade Instructions, 1865.

(g) *The Pride of Canada*. Br. & Lush. 208. See also *The Louisa*, 2 W. Rob. 22; *The Martha*, 3 Hagg. 434; *The Albion*, Ibid. 254; *The Earl Grey*, Ibid. 363; *The Columbia*, Ibid. 428; *The Hope*, Ibid. 423; *The Jane*, 5 Irish Jur. 31. See also *The Caroline*, 7 Jur. 660, where a boy was held entitled to share equally with the seamen in the salvage awarded, the Court presuming (his age not being stated) that he performed the same amount of duty as another seaman; and *The George Dean*, Swa. 290, where salvage being apportioned according to the wages of the crew, the Court directed the wages of the apprentices to be taken at two-thirds of those of able seamen. See also *The Two Friends*, 2 W. Rob. 349; *The Columbine*, Ibid. 186.

(h) Lush. 29. See also *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454; *The Nicolina*, 2 W. Rob. 175.

board, the men forming the crew were awarded double shares. In *The Golendrina* (*i*), where the mate of the salving vessel was put on board the vessel in distress, and, after great difficulty, brought her into port, he was awarded £300 out of salvage amounting to £1800, of which £1000 was paid to her owners, £200 to the captain, and £300 to be distributed among the crew, according to their ratings.

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The master of the salving ship, upon whom rests the whole responsibility of employing the ship in the service, generally receives a larger proportion of the salvage than any of the crew (*k*). There being as to this also no fixed rule, reference to the scale of distribution in some of the more modern cases in which a large proportion has been awarded to the master may be found useful. In *The Martin Luther* (*l*), out of a total salvage of £1500, of which £600 was awarded to the owners, the master was decreed £400, the remaining £500 to be divided among the crew. In *The Himalaya* (*m*), the proportions of £2000 awarded were £1000 to the owners, £500 to the master, and £500 to the

(*i*) L. R. 1 Ad. 334. See also *The Endeavour*, *Colby v. Watson*, 6 Notes of Cases, 56. See also the following American cases, where the practice of allowing a larger proportion for extra risk and exertions has been followed. *The Henry Ewbank*, 1 *Snnner*, \* 400; *The La Belle Cr  ole*, 1 *Peters*, 31; and *The Cato*, *Ibid.* 48.

(*k*) *The Martin Luther*, *Swa.* 287. See also *The Enchantress*, *Lush.* 93; *The Earl Grey*, 3 *Hagg.* 363.

(*l*) *Ubi supra.*

(*m*) *Swa.* 515. See also *The Howard*, 3 *Hagg.* 256, n., where a similar distribution was made.

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\* Where the mate who commanded the actual salvors was awarded two-eighths.

CHAP. V. crew. In *The True Blue* (*n*), out of a total salvage of £1500, £1000 of which was given to the owners of the salving vessel, the salvage having been in reality chiefly performed by her, £200 was given to the master, and £300 among the crew. In *The Ragasthan* (*o*), of £500 awarded, one half was given to the master and sole owner, and the other half to the crew. In *The Paris* (*p*), £800 was divided, £200 to the owner, £120 to the master, and the rest among the crew.

Mate's proportion.

Upon the same principle, where a pilot, assisted by boatmen, rendered salvage services to a ship in distress, the Court awarded him twice as much as each of the boatmen received (*q*). The mate, also, has been frequently awarded a large proportion where his duties have been rendered more onerous in consequence of the salvage service (*r*); and where he chiefly contributes to the success of the service, the share allotted to him may be as large or even larger than that of the master (*s*).

Apportion-  
ment be-  
tween mas-

In the Ameriean Courts, the general rule as to the distribution of salvage is stated to be that under

(*n*) L. R. 1 P. C. 250.

(*o*) Swa. 171.

(*p*) 1 Spinks, 289. See also *The Albion*, 3 Hagg. 254; and *The Defiance*, Ibid. 256, n., where out of £1000 awarded, the owners having got £350, the master was allotted £230, the mate £120, and the rest among the crew.

(*q*) *The Nicholaus Witzen*, 3 Hagg. 369.

(*r*) *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454-462; *The Albion*, *ubi supra*; *The Caroline*, 2 W. Rob. 124.

(*s*) *The Nicolina*, 2 W. Rob. 175; *The Golendrina*, L. R. 1 Ad. 334. See also, for examples of apportionment between salvors, *The Pride of Canada*, B. & L. 208; *The S. Nicholas*, Lush. 29; *The Tees*, Ibid. 505; *The Perla*, Swa. 230; *The Spirit of the Age*, Ibid. 286; *The Himalaya*, Ibid. 515; *The Britain*, 1 W. Rob. 45.

ordinary circumstances the master gets about double the share of the mate, and the mate double the share of an ordinary seaman (*t*). These proportions vary, however, according to the circumstances of the case (*u*).

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ter and  
crew in the  
American  
Courts.

It will be seen in another chapter that the compensation claimed for a salvage service may be diminished or entirely forfeited by the misconduct of the salvors; and there seems to be no reason why the same rule should not apply to the case of an individual salvor who has been guilty of any act calling for such a punishment. This course has been followed in the American Courts in two cases. In *The Waterloo* (*x*) the Court, considering that the master of the salving vessel had selfishly overlooked the true interests of his owners, had unjustifiably engaged in the salvage enterprise, and put his vessel and cargo to an excessive and improvident risk, reduced his share to that of a common seaman; and in *The Blaireau* (*y*) the share of the master was held to be entirely forfeited on the ground of embezzlement, and the share of the mate reduced to that of a common seaman.

Diminution  
of share  
through  
misconduct.

General misconduct will not, however, affect the right of a seaman to his proportion of salvage. The misconduct charged against him must have been in connection with the salvage service itself (*z*).

(*t*) 1 Conkling's Ad. Prac. 366; Marvin, 248; *The Henry Ewbank*, 1 Sumn. 400; *The La Belle Cr  ole*, 1 Peters, 31; *The Cato*, Ibid. 48.

(*u*) *The Blaireau*, 2 Cranch, 240; *The Cora*, 2 Wash. 80; *The Nathaniel Hooper*, 3 Sumn. 541, 577.

(*x*) 1 Blatch. & How, 114.

(*y*) 2 Cranch, 240.

(*z*) *The Centurion*, Ware, 490. See also *Blake v. Patten*, 3

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Passengers  
on board  
salving ves-  
sel.

If the crew of another vessel be on board the salving vessel as passengers at the time of the salvage and assist in the service, they will be entitled to be remunerated; and although, in one instance, the Court allotted to passenger seamen a much smaller sum than it did to the regular crew of the salving vessel (*a*), in a more recent case it directed that four foreign seamen and their captain who were on board the salving vessel as passengers, and assisted in the salvage, should share equally with the able-bodied seamen, their captain receiving a double share (*b*).

Part of crew  
not actually  
engaged in  
the salvage.

The Court of Admiralty has, from time immemorial, held all the persons comprising the crew of the salving vessel, if ready and willing to join in the enterprise, entitled to share in the salvage awarded, even although a part of the crew only was engaged in the service. In the distribution of the amount, however, it has repeatedly made a distinction in favour of those who have actually incurred the difficulty and peril of the enterprise (*c*). And if part of the crew of a vessel be placed on board a

Shep. 173. When in an action for a share of salvage brought by one of the crew against his owner, it was held that the owner could not set up as a defence that the plaintiff had embezzled a portion of the goods saved.

(*a*) *The Salacia*, 2 Hagg. 262-271.

(*b*) *The Perla*, Swa. 230-232. See also *The Hope*, 3 Hagg. 423, where passengers who assisted in the salvage were awarded the same proportions as able-bodied seamen. And see *The Salacia*, 2 Hagg. 262, and the American cases, *The Brig Cora*, 2 Wash. 80; and *The Blaireau*, 2 Cranch, 240, where the same rule was followed.

(*c*) Judgment of Dr. Lushington, *The Sarah Jane*, 2 W. Rob. 110-115. See also *The Mountaineer*, Ibid. 7; *The Charlotte Wylie*, 5 Notes of Cases, 4; *The Jane*, 2 Hagg. 338. And see the American case, *The Centurion*, Ware, 490.

ship in distress whose crew has been reduced by death or sickness, those who remain on board the salving ship are entitled to a share of any salvage remuneration awarded (*d*).

In the case of the crew of a light-ship rendering salvage services, however, a different rule would seem to prevail; and where a part of the crew of one of these ships performed a salvage service, it was held that the reward was confined to those who were actually engaged in the undertaking (*e*).

The right of the portion of the crew remaining on board the salving vessel to participate in the salvage is, however, confined to those who are willing to assist; and if any of them refuse their help, they will be excluded from any share (*f*).

Salvage payable to officers and seamen of the Royal Navy or Coast Guard, are generally apportioned by the authorities, according to the rules laid down for distribution in the services (*g*).

### *Proportion of Salving Vessel.*

In apportioning salvage reward between the ship-owners and the seamen, the Court, where the salving vessel is a steamer, takes into consideration the fact that the chief risk in the undertaking, and all the expense, falls upon the owners; and it has, since the introduction of steam power, awarded to this class of

Apportionment between owners and crew.

Larger proportion generally

(*d*) *The Roe*, Swa. 84. See also *The Janet Mitchell*, Ibid. 111; *The Nicolina*, 2 W. Rob. 175; *The Baltimore*, 2 Dods. 132; *The Sansome*, 3 Irish Jur. 258.

(*e*) *The Emma*, 3 W. Rob. 151. See also *The Thetis*, 3 Hagg. 14; but see *The Charlotte Wylie*, 5 Notes of Cases, 4.

(*f*) *The Baltimore*, 2 Dods. 132.

(*g*) See the Instructions of the Board of Trade, 1865, art. 94. 27 & 28 Vict. c. 24; 17 Vict. c. 19; 26 & 27 Vict. c. 116, s. 11; *The Mary Ann*, 1 Hagg. 158; *The Thetis*, 3 Hagg. 14.

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given to  
owners of  
steam-vessels.

owners a much higher proportion than owners formerly received (*h*) ; and it will also take into consideration the obvious fact, that in a great majority of such cases, the service is rendered by the steam-vessel herself, and does not arise from any extraordinary exertions on the part of the master and crew (*i*), and upon grounds of public policy, as the owners of steamers, especially when carrying passengers and mails, might, unless liberally rewarded, discourage the masters of their vessels from engaging in any salvage where human life is not in peril (*k*). And

(*h*) *The Enchantress*, Lush. 93. See also *The Martin Luther*, Swa. 287.

(*i*) *The Beulah*, 2 Notes of Cases, 61-63. See also *The Perla*, Swa. 230-232 ; *The Mary Anne*, 11 L. T. N. S. 85 ; and *The Vanguard*, 5 Irish Jur. N. S. 364, where it is laid down, that if the salving vessel be a passenger ship, that circumstance will also be taken into consideration in the apportionment of the salvage between the owners and crew.

(*k*) Judgment of Dr. Lushington, *The Martin Luther*, Swa. 287-290. See also the American cases, *The Charles*, 1 Newb. Ad. 329 ; *The Henry Eubank*, 1 Sumn. 400 ; *The Nathaniel Hooper*, Ibid. 541, where almost similar reasons are given for favouring the claims of owners to a liberal proportion of the salvage. In *The Henry Eubank*, Mr. Justice Story (p. 425) observes : "The law does not stop short with a mere allowance to the owner of an adequate indemnity for the risk so taken. It has a more enlarged policy and a higher aim ; it looks to the common safety and interest of the whole commercial world in cases of this nature, and it bestows upon the owner a liberal bounty and reward, to stimulate him to a just zeal in the common cause, and not to clog his voyages with narrow instructions which should interdict his master from any salvage service. If a bare compensation for loss and risk were accorded, what motive could any owner have to suffer his voyage to be retarded, his just expectations of profit to be frustrated, his whole commercial arrangements to be suspended upon risks which he could neither foresee nor guard against by any common prudence ? The law has a wise regard to considerations of this nature, and it offers, not a premium of indemnity only, but an ample reward measured by an enlightened liberality and forecast. . . . To this it may be added, that it furnishes a strong inducement to officers and seameo, not to desert their own proper duty to their owner and

where the steamer sustains any damage whilst rendering the service, the owner is entitled, before the amount awarded is apportioned between himself and the crew, to deduct the expense of the repairs, and a reasonable sum for the loss of the ship's services whilst she is repairing (*l*).

The owners of fishing vessels also, generally receive a larger share of salvage than the owners of other vessels, the Court taking into consideration the interruption to their occupation occasioned by the salvage service, and the fact that the wages paid to their mariners are greater than those of the crews of other vessels (*m*), and if the salving vessel was actually engaged in fishing at the time when she rendered the assistance, the Court will, in apportioning the salvage, take into consideration the interruption of the employment (*n*).

The Court will not, however, lose sight of its ancient principle of adequately and liberally rewarding the personal services of the men engaged, and as a general rule, the owners will not be permitted to take more than a moiety of the net sum received after deducting expenses (*o*).

his interests for selfish purposes, by making them share only in subordination to, and in connection with, those interests."

(*l*) *The Spirit of the Age*, Swa. 286.

(*m*) Judgment of Dr. Lushington, *The Louisa*, 2 W. Rob. 22, 26.

(*n*) *The Louisa*, 6 Notes of Cases, Supp. 531. See also, *The Albion*, 3 Hagg. 254, where seven-sixteenths was awarded to the owner of a fishing vessel; and see *The Deveron*, 10 Monthly Law Mag. (Notes of Cases) 219.

(*o*) Judgment of Dr. Lushington, *The Enchantress*, Lush. 93-96. See also *The Princess Helena*, Lush. 190. But see *The Saint Nicholas* (1 Lush. 29), where out of an award of £2800, £1500 was apportioned to the owners of the tug effecting the salvage. See as to the proportions awarded owners,

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Owners entitled to deduct repairs and demurrage.

Fishing vessels.

No more than a moiety generally given to ship-owners.

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Previous award to owners does not affect claim of master and crew.

American law as to proportion of owner.

The fact that a considerable sum has been awarded to the owners of the salving vessel in a suit brought by them, does not affect the amount to which the master and crew, who have instituted a separate suit, are entitled (*p*).

The tendency of the American Courts seems to be, to look upon the claims of the owner of the salving vessel with even a higher degree of favour than they have met with in the English Court of Admiralty.

It is stated that in ordinary cases, where there have been no peculiar services rendered, no uncommon sacrifices made, and no extraordinary perils encountered by the salving ship while engaged in the salvage service, where no voyage is broken up, nor serious damage sustained by the owner, the more usual proportion allowed him by the Courts of the United States, is one-third (*q*). In some cases, however, the owners have been awarded one-half (*r*), two-thirds (*s*), and even three-fourths (*t*). In one case,

*The Himalaya*, Swa. 515 ; *The Spirit of the Age*, Ibid. 286 ; *The Earl Grey*, 3 Hagg. 363 ; *The Columbia*, Ibid. 428 ; *The Albion*, Ibid. 254 ; *The Waterloo*, 2 Dods. 433 ; *The Morning Star* (American), 14 L. T. N. S. 420 ; *The Vine*, 2 Hagg. 1 ; *The Charlotte*, 1 W. Rob, 68 ; *The Jane*, 2 Hagg. 338 ; *The Salacia*, Ibid. 262 ; *The Nicolina*, 2 W. Rob, 175 ; *The Beulah*, 1 W. Rob. 477 ; in this case, where the owners of the salving vessel, a steam-tug, took £415 out of an award of £500, the Court did not disturb the distribution ; *The Hope*, 3 Hagg. 423.

(*p*) *The Aletheia*, 13 W. R. 279. In this case the owners of the salving vessel were awarded £700, and the master and crew (in the suit which was a subsequent one) £800.

(*q*) *Marvin*, 246. See *The Henry Ewbank*, 1 Sumn. 400 ; *The Boston*, Ibid. 330 ; *The Blaireau*, 2 Cranch, 240 ; *The Cora*, 2 Wash. 80 ; *The Amethyst*, Daveis, 20-28 ; *The Harmony*, 1 Peters, 70 ; *The Delphos*, 1 Newb. 412.

(*r*) *The Rising Sun*, Ware. 385.

(*s*) *The Waterloo*, 1 Blatch. & How. 114. See also *The C. W. Ring*, 2 Am. L. Rev. 259.

(*t*) *La Belle Créole*, 1 Peters, 31.

however, where the peril encountered was considerable, the amount awarded small, and the salvors numerous; the Court divided the salvage into thirteen equal parts, giving each salvor, including the owners, one (*u*).

The American Courts also follow the practice of the English Admiralty, in giving the owners of steamers which render salvage service a larger proportion than is generally awarded to other vessels (*x*).

Shipowners have in some instances claimed to be entitled to the proportion of salvage allotted to their apprentices, but, although on one occasion Dr. Lushington is reported to have observed, that the nature of the apprentices' connection with the vessel is to be taken into reasonable consideration, and that to a certain extent the owner should be benefited from that source, yet he expressed himself as clearly of opinion that the owner is not entitled to receive the whole benefit of the apprentice's exertions in a salvage service (*y*); and in a subsequent case, he pronounced against the claim of the owners in more absolute terms, holding the allotment of salvage to be a personal reward for labour and skill, and that whether the salvors were apprentices or not, no one had a right to interfere with the property which belonged to them (*z*).

Claim of  
owners to  
salvage  
shares of ap-  
prentices  
rejected.

(*u*) *The Stewart*, Crabbe, 218.

(*x*) *The Wm. Penn*, cited in Marvio, p. 247.

(*y*) *The Columbine*, 2 W. Rob. 186-188.

(*z*) *The Two Friends*, 2 W. Rob. 349-353; and see the American case, *The Blaireau*, 2 Cranch, 240, where it is laid down that the shares of apprentices are not to be paid to their masters, but to themselves; and see *The Berlin*, 4 Irish Jurist, 11a, where it was held that, if an owner appeals from a salvage award, and there is no appeal by the salvors, the Court,

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Shares of  
slaves.

The American Courts have held that slaves earning salvage are entitled to have it decreed to them for their own use (*a*). In one case, however (*b*), the whole sum was paid to the master on his agreeing to manumit the slave and pay him one-fifth of the sum allowed.

Shares of  
salvors re-  
fusing to  
participate  
in the re-  
ward.

In the American case of the ship *Charles* (*c*), it was held, that where some of the salvors decline or refuse to claim salvage, their shares will not revert to the benefit of their co-salvors, but to that of the owners of the property.

*Agreements for Apportionment.*

Agreement  
must be  
equitable.

Salvors may, and frequently do, agree between themselves as to the division of the sum awarded to them. If, however, the agreement should be inequitable as regards any of the parties, the Court of Admiralty will refuse to be bound by it, and will decree an equitable apportionment of the salvage (*d*). In the case of *The Louisa* (*e*), a sum of £1200 had been awarded for salvage to the owners, masters, and crews of three smacks, and this sum the owners apportioned, in accordance with an agreement signed by the men at the time of hiring. This scale of apportionment, which gave the owners about two-thirds of the salvage, the Court refused to adopt, and in the appor-

although it may reduce the award, will not interfere with the proportions.

(*a*) *Small v. The Goods*, Pet. Adm. 284-287.

(*b*) *The Blaireau*, 2 Cranch, 240.

(*c*) 1 Newb. Adm. 329.

(*d*) Judgment of Dr. Lushington, *The Enchantress*, Lush. 93-95; *The Louisa*, 2 W. Rob. 22; *The Beulah*, 2 Notes of Cases, 61.

(*e*) 2 W. Rob. 22.

tionment which it made, gave the owners only seven-sixteenths, and the masters and crews nearly double what they would have taken under the agreement. In the course of his judgment, Dr. Lushington is thus reported:—"Am I in the judgment I am about to pronounce, bound and concluded by the articles which are so stated to have been entered into by the owners and crews of these vessels? It would, I conceive, be repugnant to general principles, and highly prejudicial to public interests, if such a proposition could be legally maintained in cases of this description. What would be the effect of it? The effect would be to take away from actual salvors the motives to all enterprise and energy. Until, therefore, I am compelled by superior authority, I never will consider articles of this nature, made previous to the salvage service, binding and conclusive upon my judgment"(f). In *The Enchantress* (g), the Court held an agreement for apportionment, which stipulated that the amount of the salvors' reward should be left to the determination of the agent of the salving ship, to be inequitable and void. In *The Silver Bullion* (h), where a person incurred risk and rendered

(f) See also *The Beulah*, 2 Notes of Cases, 61, where the Court decreed an equitable apportionment, disregarding a scale which the owners contended was based upon an arrangement between them and the crew. See also, *The Mary Anne*, 11 L. T. N. S. 85; where the Irish Court of Admiralty in distributing salvage, disregarded an agreement by which the master, in consideration of a per centage on the earnings of the vessel, and the men in consideration of their wages, had bound themselves to forego all salvage claims. See, however, the 18th section of 25 & 26 Vict. c. 63, *post*, which modifies the effect of the previous cases where the vessel is to be employed in salvage service.

(g) Lush. 93.

(h) 2 Spinks, 70.

CHAP. V. valuable service in the salvage of life and property and was paid a sum of eleven shillings, and signed a receipt in full of all demands, the Court held this sum to be utterly inadequate to the services performed, and awarded him £50 (*i*); and in the case of *The Phantom* (*k*), where the owners of the vessel saved set up an alleged agreement, by which the salvor was to accept 8s. 6d. in full for his services, the Court held such a sum to be utterly futile, and awarded him £10 and costs.

### *Abandonment of Salvage.*

Agreement for abandonment of salvage, when void. By the 182nd sec. of the Merchant Shipping Act, 1854, it is provided that every stipulation by which any seaman consents to abandon any right which he may have, or obtain, in the nature of salvage, shall be wholly void (*l*), but by a subsequent Act (*m*), it is declared that this provision "does not apply to the case of any stipulation made by the seamen belonging to any ship which, according to the terms of the agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by such ship to any other ship or ships."

Discretion of Court unaffected. The Court of Admiralty does not construe the

(*i*) *The Silver Bullion*, *ubi supra*. See also the Instructions issued by the Board of Trade to receivers of wreck, 1865, Art. 97 (*b*).

(*k*) L. R. 1 Ad. 58.

(*l*) "The Act of Parliament says that every stipulation by which any seaman consents to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative; and the Court has held, and must hold, that not only all agreements barring salvage are wholly inoperative, but that all agreements limiting the proportions of salvage money are to be maintained only so far as they are really equitable." Per Dr. Lushington. *The Enchantress*, Lush. 93.

(*m*) 25 & 26 Vict. c. 63, s. 18.

above sections as in any way fettering its discretion CHAP. V.  
 upon the subject of these agreements. It has been fected by  
foregoing  
section.  
 laid down that the joint effect of the two clauses is simply to render such agreements not illegal, and to place them on the same footing as they stood before any legislation on the subject (*n*).

It has been held that such an agreement as that provided for in the foregoing section, is not only binding on those who are parties to it, but upon a person temporarily in the employment of the ship-owners who has notice of the arrangement; and in *The Ganges* (*o*), where a suit for distribution of salvage was brought against a tug company, by a person who was temporary master of the salving tug in the place of B., whom he knew to be employed under an agreement for fixed wages and a per centage on the salvage earned, the Court held that the plaintiff was bound by the agreement, and dismissed his suit.

The agreement need not be in writing, but it rests Agreement  
need not be  
in writing. upon those who dispute the seaman's claim to salvage to show that there was an agreement, that the vessel was to be employed on salvage service, and a stipulation that the seamen should waive their right to the salvage money (*p*).

By way of further protection to mariners, it is also Sale of sal-  
vage void. provided by the Merchant Shipping Act (*q*), that no assignment or sale of salvage made prior to the

(*n*) Judgment of Sir R. Phillimore, *The Ganges*, L. R. 2 Ad. 370; *The Pensacola*, B. & L. 306. See also *The Pride of Canada*, B. & L. 208.

(*o*) L. R. 2 Ad. 370.

(*p*) Judgment of Dr. Lushington; *The Pride of Canada*, Br. & Lush. 208-210. See also *The Mary Anne*, 11 L. T. N. S. 85.

(*q*) 17 & 18 Vict. c. 104, s. 233.

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accruing thereof shall bind the party making the same, and that no power of attorney, or other authority for the receipt of any such salvage shall be irrevocable.

Local custom disentitling seamen to salvage void.

It is almost unnecessary to observe that the Court of Admiralty will not recognise any local custom which disentitles a seaman to a share of salvage which he has assisted in earning. Where salvage had been paid for services rendered by a fishing smack of Hull, the crew of which consisted of a master and two able seamen, who were paid by shares of the earnings, and a boy who was paid weekly wages, and on a suit being brought by the boy for distribution of the salvage, it was alleged that a custom existed at Hull, whereby those engaged in the fishing trade, who receive wages, are excluded from reward for salvage services, the Court refused to recognise such a custom as a bar to the suit (*r*).

If, however, the local or customary agreement be an equitable one, as if, for instance, it provides that of the crew of a life-boat company, those who stay shall be rewarded as those who go, the Court will favourably consider it (*s*).

No set off of  
salvage in  
claim for  
wages.

If the master should retain a greater proportion of salvage reward received by him than the owners consider him entitled to, they cannot set it off against his claim for wages, but must institute a suit for apportionment, and bring into Court the sum they received (*t*).

(*r*) *The John*, Pritchard's Digest, p. 830.

(*s*) Judgment of Dr. Lushington, *The Enchantress*, Lush. 98-97.

(*t*) *The Princess Helena*, Lush. 190.

And where salvage money has been paid into Court for the purpose of distribution, the Court will not decree payment out of the fund of advances made to the salvors by their agent, and has refused to do so even where the persons receiving the advances were minors, against whom the lender of the money had no remedy at law (*u*). CHAP. V.  
No deduction of advances.

In case any of the salvors should lose their lives rendering the service, or should die before the apportionment takes place, the Court will direct their shares to be paid to their representatives (*x*). Shares of deceased salvors.

Although co-salvors almost invariably join in the same suit, their interests are not joint but several, and consequently, except perhaps under very exceptional circumstances, payment of the salvage money to one does not discharge the claims of the rest, unless they concurred in or ratified the transaction. In the case of *The Sarah Jane* (*y*), the owners of that vessel paid to the captain of *The Saucy Lass*, for salvage services rendered by the latter vessel and her crew, £800; the captain giving a receipt "for himself, mate, crew, and all others interested in *The Saucy Lass*." The crew afterwards, on being dissatisfied with the share offered them by their master, instituted a suit against *The Sarah Jane* for salvage, and the owners pleaded the settlement and payment to the master, but this plea the Court decided to be Payment to one salvor does not discharge the claims of the others.

(*u*) *The Louisa*, 2 W. Rob. 22. See also *The Louisa*, 3 W. Rob. 99. The American Admiralty Courts, as a general rule, decree a minor's share of salvage to be his own property; Dunlop's Practice, 2nd edit., p. 98.

(*x*) *The Marquis of Huntly*, 3 Hagg. 246-249; *The Hope*, Ibid. 423-425.

(*y*) 2 W. Rob. 110.

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(*z*) In the course of his judgment in this case, Dr. Lushington observes (p. 113) : “ If I were to hold that masters and owners possessed a general power to act for the rest of the crew, it is obvious from past experience of the manner in which mariners have been sometimes dealt with, that they would often be deprived of that reward to which they are justly entitled. On the other hand, I feel that an injury might be inflicted upon the owners if it was laid down as a rule of universal application that in no case whatever, neither the master nor the owners can act on behalf of the rest of the crew. . . . It is unnecessary, I think, to revert to the principles which I examined in the case of *The Britain*, and in other cases, for the purpose of showing that in all ordinary cases of salvage, neither the owners nor the master have a power of binding the crew without their previous consent.”

(*a*) 1 W. Rob. 40.

(*b*) See *per* Dr. Lushington, *The Britain*, *ubi supra*, p. 43.

## CHAPTER VI.

## CONTRIBUTION.

THE ordinary usage of the Court of Admiralty in apportioning the liability for salvage between the ship and cargo, is to take the whole value of the ship and cargo, and assess the amount of remuneration upon the whole, each paying its due proportion (*a*). The vessel is not, however, liable for the salvage due from the cargo, nor the cargo for that due from the vessel, each must bear its own portion (*b*). Even although the owners of the cargo take no part in resisting the salvage suit, but leave the owners of the ship to defend it, they must bear their proportion of expenses of a defence which may have secured a reduction in the amount of the salvage claim (*c*).

An exception to the rule that the cargo and ship contribute to salvage in equal proportions, is said to exist where the cargo saved consists of silver or bullion. Upon this subject, Dr. Lushington is thus

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Apportion-  
ment of lia-  
bility be-  
tween ship  
and cargo.

(*a*) Per Dr. Lushington, *The Emma*, 2 W. Rob. 315-319. See also, *The Mary Pleasants*, Swa. 224; *The Maria Jane*, 14 Jurist, 857; *Briggs v. The Merchant Traders' Ship, Loan, and Insurance Association*, 13 Q. B. 167.

(*b*) *The Pyrenees*, B. & L. 189.

(*c*) *The Peace*, Swa. 115.

CHAP. VI. reported : "With respect to silver and bullion, it is true that a distinction is wisely and properly permitted, and this upon the consideration that it is more easily rescued and preserved than more bulky articles of merchandise" (*d*). Formerly a different rule seems to have prevailed. In *The Vesta* (*e*), Sir C. Robinson, in speaking of a distinction sought to be made as to the nature and value of the property saved is thus reported : "It is said that it might be made with reference to the difference of danger to which the property was exposed, but that would be a difficult criterion to be applied in most cases. The buoyancy of articles may vary in different places, in the sea, or in the river, and on the high seas, the consequence may not be very different to the owner, whether the article sink or float away. It might be adopted on a computation of the difference of labour employed in the constant attempts to float the ship, which were ineffectual for so long a time, and the comparative facility of floating the deals; but I do not think that would be a safe criterion in general cases. Suppose, for instance, a casket of jewels on board, and which might be saved with great facility, it could not in such a case be contended that the salvor would only be entitled to a small gratuity for carrying it on shore. To uphold such a motive would lead to preferences in saving one part of the cargo before another. The more usual rule has been to make a valuation of ship and cargo, and I think that would be the more convenient practice" (*f*).

(*d*) *The Emma*, 2 W. Rob. 315, 319.

(*e*) 2 Hagg. 189-193.

(*f*) See also *The Jonge Bastiaan*, 5 C. Rob. 322.

The owners of the cargo must also bear their pro- CHAP. VI.  
Life salvage.portion of salvage awarded for saving the lives of passengers on board the vessel, and it would appear that their liability in this respect is not affected by the fact that the efforts of the salvors did not contribute to the safety of the cargo (*g*).

If the owner of the ship should pay the whole amount claimed for salvage, in order to obtain the release of the ship and cargo, he will have a lien upon the cargo for the amount which it is bound to contribute towards the salvage (*h*).

(*g*) *The Fusileer*, 34 L. J. Ad. 25.

(*h*) *Briggs v. The Merchant Traders' Ship, Loan, and Assurance Association*, 13 Q. B. 167.

## CHAPTER VII.

### MISCONDUCT OR NEGLIGENCE OF SALVORS.—EFFECT OF ON THEIR REMUNERATION.

#### *Forfeiture for Misconduct.*

CHAP. VII. As the amount to be awarded for salvage services Misconduct. rests entirely in the discretion of the Court, it is obvious that the conduct of the salvors may have a very material effect upon their remuneration. The Court requires that those who seek its aid should come before it with clean hands; and where salvors are proved to have misconducted themselves, their remuneration may be reduced and even altogether forfeited, however valuable their services originally may have been (*a*). It requires a very strong case, however, to induce the Court to hold salvage once

(*a*) “It is an established rule of this Court, and one I shall never depart from, that however valuable a service may be, salvors may forfeit their just reward if they are guilty of misconduct.”—Per Dr. Lushington, *The Lady Worsley*, 2 Spinks, 253, 256. “Salvage is forfeited by wilful misconduct, bad faith, an intention not to do the whole of the duty, or an intention to protract that duty for the purpose of piracy.”—Per Dr. Lushington, *The Magdalen*, 31 L. J. Ad. 22-24. See also the American case of the schooner *Boston*, 1 Sumn. 328-341, where Mr. Justice Story is thus reported: “The party who asks aid must come into Court with clean hands. In cases of salvage the party finds himself upon a meritorious service, and upon the implied understanding that he brings before the Court, for its final award, all the property saved, with entire good faith,

it is earned to be entirely forfeited. The law upon this point is thus laid down by Sir John Coleridge in *The Atlas* (*b*): Where “success is finally obtained, no mere mistake or error of judgment in the manner of procuring it, no misconduct short of that which is wilful and may be considered criminal, and that proved beyond a reasonable doubt by the owners resisting the claim, will work an entire forfeiture of salvage. Mistake or misconduct other than criminal which diminishes the value of the property salved or occasioned expense to the owners, are properly considered in the amount of compensation to be awarded. Wilful or criminal misconduct may work an entire forfeiture of it; but that must be proved by those who dispute it.”

In many of the cases where salvors have been charged with misconduct or negligence, compensation has been refused to them, rather because their efforts were fruitless in consequence of their conduct than from the misconduct itself (*c*).

There are, however, several instances where the Court refused compensation, although the salvage had been successfully accomplished. In *The Martha* (*d*), the crew of a Ramsgate lugger went to the assistance of a vessel aground upon the Goodwin Sands and signalling for help, and, having anchored their lugger, made preparations to get the barque’s bower anchor into her with a view to lay it out and

and he asks a compensation for it uninjured and unembezzled by him.” See also, *The Bello Corrunos*, 6 Wheat. 152.

(*b*) 1 Lush. 518, 528.

(*c*) *The Duke of Manchester*, 4 Notes of Cases, 575, on appeal, 6 Moore, P. C. C. 91; *The Atlas*, 1 Lush. 518.

(*d*) Swa. 489.

CHAP. VII. haul the barque off, but afterwards resisted the crew of the barque in availing themselves of the aid of a steamer, attempted to cut the hawser, created a riot and confusion on deck, and detained the vessel on the sand by wrongfully letting go her anchor,—the Court, whilst it considered their conduct in going off to the vessel in the first instance meritorious, held that by their subsequent misconduct they had forfeited all claim to salvage (*f*).

In *The Lady Worsley* (*g*), that vessel having gone aground on the western coast of Africa, was being plundered by natives when she was taken possession of by a salvor and removed into deep water, but the salvor, instead of surrendering the vessel to the agent of the owners at the spot, kept possession of her until the arrival from England of another agent of the owners, and in the meantime refused to permit the cargo to be bartered, but had it sold much below its value, he himself becoming a purchaser of a large quantity; the Court, on these circumstances, held that by his conduct he had forfeited all claim to salvage.

Instances of diminished salvage.

There are many cases where the misconduct of the salvors not being of so serious a nature as to induce the Court to adopt the extreme measure of visiting upon them an entire forfeiture of salvage, it has punished them by awarding a sum much less than under different circumstances they would have been entitled to. Thus, where certain salvors went to the

(*f*) *The Martha*, Swa. 489. See also *The Barefoot*, 14 Jurist, 841.

(*g*) 2 Spinks, 253.

assistance of a vessel that had gone ashore, discharged part of her cargo, and assisted at the pumps until the arrival of a steamer which had been employed by the owners of the vessel, when they obstructed the unloading of the vessel into barges sent by the owner, and resisted the carrying off a hawser from the vessel to the steamer, the Court, although holding their misconduct not to be such as to deprive them of all reward, fixed the amount to be paid them at a sum much less than they would otherwise have received (*h*).

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In *The Glory*, where a set of salvors prevented a steam-tug from coming close enough to the distressed vessel to take her in tow, the Court condemned their conduct, and awarded £100 only instead of £300, which it otherwise would have given (*i*).

In *The Glasgow Packet* (*k*), a vessel went ashore near Gravesend and sank, and a number of boatmen commenced getting up various articles from her decks with boat-hooks, and, having procured two anchors and hired barges and lighters, endeavoured to raise the vessel, till, upon the arrival of the owners, they were told that their assistance was not required; when they still continued to hover round the vessel and obtrude their services, and some of them persisted in coming up to London in the vessel after she had been raised, the Court held their conduct to be exceedingly reprehensible, and refused to award them anything in respect of the

(*h*) *The Dantzic Packet*, 3 Hagg. 383. See also *The Black Boy*, Ibid. 386 (n.) ; *The San Nicola*, 6 Irish Jurist, 91.

(*i*) 14 Jurist, 676. And see *The Prins Frederick*, 2 Dods. 451.

(*k*) 2 W. Rob. 306.

CHAP. VII. services they had obtruded on the owners after her arrival (*l*).

Slight evidence of demand or acceptance of assistance sufficient.

Although, however, the Court will, as shown in the preceding case, refuse any reward to salvors who obtrude upon the master of a vessel assistance which he refuses to accept, yet where services are rendered to a vessel in actual distress, it will not require from the salvors very strict proof of a demand or acceptance of their help, especially where the circumstances of the case are such that the master would not be justified in refusing to avail himself of the assistance offered him. In giving judgment in *The Annapolis* (*m*), Lord Kingsdown is thus reported on the subject:—"It appears to their Lordships that it would be dangerous to hold that if salvage service be actually rendered to a ship she cannot be called upon to pay anything unless it can be shown that she either requested or expressly accepted assistance. In many cases the urgency of the case may be too great to admit of previous discussion; and if a salvor were required to prove such agreement before he could recover, it is to be feared that there would be much slackness in cases which most require energy and activity. They agree with what they understand to be the opinion of the learned judge below, that it is sufficient if the circumstances of the case are such that if an offer of service had been made any prudent man would have accepted it."

Improperly refusing further assistance.

Where the salvors, although they succeeded in completing the salvage, improperly refused further

(*l*) See also *The Dosseitei*, 10 Jurist, 865.

(*m*) Lush. 355-375.

assistance which had been offered them at a time CHAP. VII. when the success of their efforts was doubtful, the Court, to mark its sense of their misconduct, diminished the amount of the remuneration (*m*).

The Court looks with disfavour upon exorbitant demands by salvors; but although there is some authority for saying that it will reduce the remuneration where an exorbitant sum has been claimed (*n*), there does not appear to be any instance of its having actually done so.

The misconduct must, however, have been connected with the salvage service; and where the defendants in a suit for salvage applied to be allowed

Exorbitant demands.

The misconduct must be connected with the service.

(*m*) *The Dosseitei*, 10 Jurist, 865. See also *The Eleanora Charlotta*, 1 Hagg. 156, where Lord Stowell censured salvors for taking a vessel into an inconvenient port, and unnecessarily remaining in possession.

(*n*) "Even services of the highest class might be lessened by subsequent misconduct, and especially by exorbitant demands." Per Lord Stowell, *The John and Thomas*, 1 Hagg. 157, n. See also *The Hector*, 3 Hagg. 90-95; *The Towan*, 2 W. Rob. 259; *The Magnolia*, 29 L. T. 40. And see the American case, *The Elvira*, Gilpin, 60, where Judge Hopkinson, in the course of his judgment (p. 75) observes: "We must not teach a salvor that he may stand ready to devour what the ocean may spare. He must not be permitted to believe that he brings in a prize of war and not a friend in distress. If he has rendered his assistance to the distressed in a proper spirit, he will be satisfied with a just and fair remuneration for the labour, hazard, and expense he has encountered in the service, and it is only a proper spirit that we should seek or desire to satisfy. To this measure of compensation the judge, governed by a liberal policy, will add a reasonable encouragement, which the generous and humane will hardly need, to prompt men to exertions to relieve their fellow men in danger and distress. But we must remember that the policy of the law is not to provoke or satisfy the appetite of avarice, but to hold an inducement to such as require it to make extraordinary efforts to save those who may be encompassed by perils beyond their own strength to subdue." See also *The Henry Ewbank*, 1 Sumn. 400-413; *The North Carolina*, 15 Peters, 40; *Lewis v. The Elizabeth and Jane, Ware*. 33.

CHAP. VII. to add to their pleas an allegation that the alleged salvors had, since the commencement of the suit, assaulted some of the witnesses who were going to give evidence against them, the Court rejected the motion, with costs (*o*).

Offences  
under Mer-  
chant Ship-  
ping Act.

In addition to the above instances of misconduct there are several offences with respect to wreck provided against by the Merchant Shipping Act, 1854; and should the alleged salvors be guilty of any of these offences they may, in addition to the punishment imposed by the statute, incur an entire forfeiture of any salvage they may have earned (*p*). The wrongfully carrying away or removing any part of a vessel in distress, or of her cargo, or any wreck; the endeavouring in any way to impede or hinder the saving of the vessel or cargo, and secreting of any wreck, or the obliterating or defacing any marks thereon, are offences involving, in addition to any other punishment provided by the law, a penalty of £50 (*q*). The endeavouring to board a vessel in distress without the direction of the Receiver or his substitute, or the leave of the master, may be repelled by force, and is an offence also punishable by a penalty of £50; and it is a felony punishable by four years' penal servitude to take into and sell in any foreign port a distressed vessel, her cargo, or

(*o*) *The Fielden*, 11 W. R. 156. See *The Hopewell*, 2 Spinks, 249. Where the owners of the property saved sought to deduct from the salvage a loss of £260, which they had sustained through the detention of the vessel in the custody of the Receiver of Docks, after tender to the salvors of a sufficient amount; and the Court refused to make the deduction, the owners having it in their power to get the vessel released on security. See the American case, *The Centurion*, Ware, 490.

(*p*) *The Wear Packet*, 2 Spinks, 256.

(*q*) 17 & 18 Vict. c. 104, s. 478, *post*.

any wreck found within the limits of the United Kingdom (r). Disobedience to the orders which the Receiver of Wreck whilst assisting a distressed vessel is empowered to make is an offence similarly punishable. It is the duty of this officer when any vessel is stranded or in distress within his district, upon being made acquainted with the accident, to proceed to the place where the vessel is, and on his arrival to take the command of all persons present, and assign such duties to each person and issue such directions as he may think fit, with a view to the preservation of the vessel and cargo and the lives of the persons belonging to the vessel (s). (1) He may summon such number of men as he thinks necessary to assist him; (2) require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power; and (3) he may demand the use of any waggon, cart, or horses that may be near at hand (t). He is justified in suppressing by force any attempt to plunder, to create disorder, or to obstruct the preservation of the vessel, lives, or cargo (u); and he is entitled to the custody of any cargo or articles washed ashore or taken from a distressed vessel (v), and of all wreck that may be found by any person except the owner of it (x). Any person omitting to deliver up to the Receiver wreck found or taken possession of by him,

(r) 17 & 18 Vict. c. 104, s. 479.

(s) 17 & 18 Vict. c. 104, s. 441.

(t) 17 & 18 Vict. c. 104, s. 442.

(u) 17 & 18 Vict. c. 104, s. 444.

(v) 17 & 18 Vict. c. 104, s. 443.

(x) 17 & 18 Vict. c. 104, s. 450.

CHAP. VII. he not being the owner of it, forfeits all claim to salvage, and is liable to pay double the value of the wreck to the owner of it, and a penalty of £100 (*y*); and any persons wilfully disobeying the directions of the Receiver incurs a penalty of £50 (*z*); and any person refusing to comply with the requisitions or demands which he is authorised to make, a penalty of £100 (*a*).

*Onus of proof of misconduct.* The proof of misconduct, like that of any other criminal charge, rests upon those who impute it. The presumption is in favour of innocence; and to establish against a salvor misconduct involving a forfeiture of salvage, the evidence must be conclusive, that is to say, it must be such as to leave no reasonable doubt in the mind of the judge (*b*).

*Conviction by magistrates.* Where, however, the misconduct of the salvors has already been the subject of judicial investigation, and they have been convicted of improper interference with the cargo of a vessel in possession of the Receiver of Wreck, the conviction is an answer to any claim for salvage. Thus where a set of salvors persisted in their endeavour to unload into their own boats the cargo of a vessel in distress after men had been put on board by the Receiver of Wreck, and were convicted before the justices for disobedience to the Receiver under 9 & 10 Vict. c. 99 (*c*), the Court held that it had no power to consider whether the conviction was right or

(*y*) 17 & 18 Vict. c. 104, s. 450.

(*z*) 17 & 18 Vict. c. 104, s. 441.

(*a*) 17 & 18 Vict. c. 104, s. 442.

(*b*) Judgment of Sir John Coleridge, *The Atlas*, 1 Lush. 518-528. See also *The Charles Adolphe*, Swa. 153-156.

(*c*) See similar enactment in 17 & 18 Vict. c. 104, s. 445.

wrong, and pronounced against the claim for sal- CHAP. VII.  
vage, with costs (*d*).

The Conrt will also look with disfavour on the claims of salvors who have shown *mala fides*. Upon this subject Dr. Lushington observes:—“The principles are these—that salvage is forfeited by wilful misconduct, bad faith, an intention not to do the whole of the duty, or an intention to protract doing that duty for the purposes of piracy. In all these cases the Court would hold as it did in the case of *The Duke of Manchester*, that the whole salvage is forfeited altogether; and I shall be very desirous,

(*d*) *The Wear Packet*, 2 Spinks, 256. But see, *contra*, *The Louisa*, Pritchard's Digest, p. 799. In giving judgment in the *Wear Packet*, Dr. Lushington observes (p. 257) : “I am clearly of opinion that it is quite impossible for the Court to decree salvage to the parties claiming it under the circumstances of this case. The provisions of the Act of Parliament referred to have been carefully framed for the purpose of preventing any unjust interference with respect to a ship in distress. I say *carefully* framed, because it vests authority in the master, owner or officer in charge of the ship, then in the Receiver of Droits, and for want of their presence, in various officers, as the Coastguard, Excise, &c., stating them in every gradation, to prevent, not merely improper interference with persons attempting to effect the salvage, but sometimes also the destruction of the property. Whether these parties have been convicted of a violation of sect. 15 or sect. 45, does not appear to me to be of importance. After the men had been sent on board by the receiving officer, these parties still persisted in their endeavour to unload the cargo, and to put it on board their own boats. This, I apprehend, to be a violation of the Act of Parliament, and on that ground I should feel myself compelled to reject this claim, and when I find that criminal proceedings under the statute were instituted against the parties, that they were convicted, and that the conviction was confirmed at the Quarter Sessions, I am of opinion that I have no power to consider whether such conviction was right or wrong. It stands before me as an act unimpeachable in this and other Courts. If I were to give these parties salvage reward, the case would be reduced to the absurdity of the same men being punished in one Court and rewarded in another for the very same act.”

CHAP. VII. whenever such a case occurs, to do that which would be the just punishment to salvors, and for the benefit of the commercial interests of this country" (e).

American  
law.

The American Courts have held salvage to be entirely forfeited by bad faith and corruption on the part of the salvors. In *The North Carolina* (f), where a person was appointed to act as a salvage arbitrator who, to the knowledge of the salvors, had an interest in enhancing the amount of compensation and awarded a sum unjustly large, the Court held the circumstance to disclose an attempt at collusion which worked an entire forfeiture of salvage. In the ship *James* (g), salvage was also held to be entirely forfeited in consequence of the salvors having agreed to pay the master 2500 dollars for the exclusive privilege of saving the property. In *The Aurora* (h), where the salvors had unnecessarily lightened the vessel of 205 bales of cotton in order to magnify their services and obtain a larger salvage than they were entitled to, it was held that notwithstanding they had rendered important services, the whole compensation was forfeited. In *The Byron* (i), where the salvors carried out an anchor ahead and planted it in such a position as to hold the vessel on a reef instead of hauling her off, the circumstances

(e) *The Magdalen*, 31 L. J. Ad. 22-24. See also *The Westminster*, 1 W. Rob. 229. There it was alleged that the salvors had entered into an agreement for the salvage of the ship and not of the cargo, and Dr. Lushington, in giving judgment said, that if the charge had been proved, he would at once have refused to pronounce any salvage at all due under such circumstances.

(f) 15 Peters, 40.

(g) Marvin, 232.

(h) Ibid.

(i) Ibid. 231.

were held to disclose a case, not merely of negligence, but one of such dishonesty and fraud that the whole salvage was decreed to be forfeited. In *The Mary Hale* (*k*), the shares of two of the salvors were declared to be forfeited in consequence of their attempting to seduce the ship's company from their duty, by telling them that the ship being in charge of salvors they were not bound to work unless they were paid extra. And in *The Leander*, the captain and owners having concealed a part of the salvage goods, their shares were decreed to be forfeited to the owners of the vessel saved (*l*).

Robbery by the salvors of any portion of the stores or cargo of the vessel saved would, as a matter of course, if proved, be an answer to a suit for salvage (*m*). Such a charge must, however, be most distinctly proved; and where salvors are on board a vessel for the purpose of rendering her assistance, they are entitled to consume all that is necessary of the stores for the purpose of maintaining themselves whilst in the discharge of their duty; and even if there be some waste under the circumstances, the Court will refuse to look into minutiae, or to rely upon it (*n*).

The American law as to the effect of theft upon a

(*k*) Marvin, 236.

(*l*) Bee, 260. See also *The Blaireau*, 2 Cranch, 239.

(*m*) *The Florence*, 16 Jurist, 572. See also the American cases, *The Dove and Cargo*, 1 Gallison, 585; *The Blaireau*, 2 Cranch, 239; *The Missouri*, 18 American L. R. 38; *The Boston*, 1 Sumn. 328.

(*n*) *The Howthandel*, 1 Spinks, 25-29. See also *The Louisa*, 2 W. Rob. 22-24. In this case the Court made a deduction from the sum allotted to the salvors, to compensate the crew of the derelict saved for clothes on board which had been lost or made away with by the salvors, the Court not imputing to them any felonious intention.

CHAP. VII.  
American  
law as to  
proportion  
for theft.

claim for salvage does not differ from that of this country, and there are many instances in the American Reports of salvage having been entirely forfeited in consequence of embezzlement. In *The Island City* (*p*), where a general system of plunder seemed to have been carried on by the salvors on board the derelict, and the whole of the salving crew having been found to have either participated in the theft or connived at it, they were held to have forfeited all claim to compensation, although the owners of the vessel rendering the service were allowed salvage. In *The Boston* (*q*), where a master and part-owner embezzled a portion of the property, his shares of the salvage as owner and master were forfeited, and it was also laid down in this case that even where the embezzlement takes place after the salvage was completed, and whilst the property was in the possession of the Court, it still occasioned a forfeiture of the salvage. In *The Mulhouse* (*r*), part of the salving crew remained on board the derelict whilst the others returned to port in their vessel with some kegs of specie. One keg was stolen by some of those who returned, and it was held that only those who remained on board the derelict were entitled to salvage. In *The S. A. Boice* (*s*), a vessel had been captured by a privateer, and, after being partly plundered, was suffered to go adrift without a crew, and the persons claiming to be salvors surrounded the vessel in small boats and plundered her of everything they could,

(*p*) 1 Black, 121.

(*q*) 1 Sumn. 328.

(*r*) 22 American L. R. 276.

(*s*) 13 L. T. N. S. 65.

and afterwards, on her owners arriving, assisted them in getting her off, the Court held that they could not maintain their action for salvage, but as the owners offered to pay them for what they had done they were allowed to receive a *quantum meruit* for work and labour, but without costs. In *The Octavia* (*t*) it was held that the master has no right to give away any of the stores or cargo of his vessel, and that an acceptance of them by the salvors, or their connivance at his waste or misuse of them would forfeit or diminish their salvage. It was at one time considered in America (*u*) that fraud or actual embezzlement on the part of the master would defeat the claim of the owner of the salving vessel. In *The Missouri's Cargo* (*v*), however, it was decided otherwise, the Court holding that only the guilty parties should suffer.

Where the salvor has been guilty of misconduct, the owner is not prevented from raising it as a defence by the fact that he has negotiated with the view of referring the salvage claim to arbitration (*w*). Negociation  
no waiver.

Where the defendant in a salvage suit intends to raise the defence of misconduct on the part of the salvors, he should do so at the earliest possible stage of the proceedings (*x*). He will not be allowed to set Charge of  
misconduct  
must be  
pleaded.

(*t*) Marvin on Salvage, 113.

(*u*) *The Rising Sun*, Ware, 385.

(*v*) *The Missouri's Cargo*, I Sprague, 260. In this case, part of the property having been embezzled and concealed by the master after it had been saved, was ultimately restored to the owner, and salvage on this portion was held to be due to the owner and innocent salvors, they having had nothing to do with the embezzlement. See also *The Fair American*, Peters, 87.

(*w*) *The Martha*, Swa. 489. See *The Purissima Concepcion*, Notes of Cases, 150.

(*x*) *The City of Edinburgh*, 2 Hagg. 333.

CHAP. VII. up the charge unless it is distinctly brought forward in the pleadings (*x*).

### *Unskilfulness.*

Negligence  
or unskilful-  
ness of  
salvors.

The amount of skill and knowledge which salvors are expected to possess depends, in a great measure, upon circumstances. Although, ordinarily, where persons undertake to perform a salvage service the Court will not require them to be finished navigators, it does expect that they should possess and exercise such a degree of prudence and skill in the performance of their task as persons in their vocation and condition in life usually do possess and are fairly expected to display (*y*). The Court will, however, look with less leniency upon the conduct of incompetent persons who assume the character of salvors, when there are others present willing to engage in the undertaking and competent to bring it to a successful issue. In *The Dygden* (*z*), Dr. Lushington thus states the law upon the subject: "Where persons offer their services to vessels in distress, and there are no other individuals on the spot capable of rendering more efficient assistance, the Court will look with considerable indulgence at their effort; because, being the only aid that can be procured and offered in a state of great exigency, every allowance must be made if they are not possessed of adequate knowledge to perform the duty they had undertaken. But different considerations will apply to the conduct of individuals who assume the character of salvors when there are other persons com-

(*x*) *The Minnehaha*, 1 Lush. 335.

(*y*) *The Cape Packet*, 3 W. Rob. 122-125.

(*z*) 1 Notes of Cases, 115.

petent to discharge these duties" (a). Dr. Lushington has, in more than one place, laid it down that salvage remuneration may be entirely forfeited through want of skill or negligence in the salvors (b). These dicta are, however, inconsistent with the law as laid down by Sir John Coleridge in *The Atlas* (c), where the general rule is stated to be, that where salvage has been finally effected, no mistake or error of judgment in the manner of procuring it, and no misconduct short of that which is wilful and may be considered criminal, and that proved beyond a reasonable doubt by the owners resisting the claim, will work an entire forfeiture of salvage. In *The Duke of Manchester* (d), *The Neptune* (e), *The Dygden* (f), and *The Lockwoods* (g), which are cited as authorities for the proposition that want of skill occasions a forfeiture of salvage, no complete salvage was effected, the efforts of the salvors, in consequence of their own negligence, resulting in no benefit to the vessel.

(a) See also, *The Neptune*, 1 W. Rob. 297.300; *The Magdalén*, 31 L. J. Ad. 22; *The Howthandel*, 1 Spinks, 25-27; *The Duke of Manchester*, 2 W. Rob. 470; *The Lockwoods*, 9 Jurist, 1017; *The John Bryant*, 5 Irish Jurist, 233.

(b) "Even where essential services have been rendered to a vessel, the subsequent misconduct of the salvor may not only diminish the amount of his reward, but his entire claim may be forfeited."—Dr. Lushington in "*The Duke of Manchester*," *ubi supra*, p. 477. "There may be instances of such gross negligence, independent of any wilful inattention, as would debar all claim for salvage recompense."—Dr. Lushington, *The Cape Packet*, 3 W. Rob. 122-125.

(c) 1 Lush. 518-528. See also *The Rosalie*, 1 Spinks, 188-191; *The Magdalén*, 31 L. J. Ad. 22.

(d) 2 W. Rob. 470.

(e) 1 W. Rob. 297.

(f) 1 Notes of Cases, 115.

(g) 9 Jurist, 1017.

CHEP. VII. Although it may be a question of doubt whether negligence or unskilfulness in the salvors will work an entire forfeiture of salvage, still, if the property saved sustains any injury in consequence of such negligence or unskilfulness, the Court will impose upon the salvors a part of the burden of the loss by diminishing their remuneration. The extent of this diminution is not, however, measured by the amount of loss or injury sustained, but is framed upon the principle of proportioning the diminution to the degree of negligence, not to the consequences (*h*). Thus where certain salvors took possession of a derelict which they found lying bottom upwards, and, after some difficulty, towed her into Falmouth, the Court reduced the amount of their reward in consequence of the injuries they did to the vessel by improperly turning it over in shallow water instead of taking it into deep water and parbuckling it (*i*). And where a steamer having got a vessel off the Goodwin Sands, where she had been aground, took her in tow, and the vessel afterwards, in consequence of the negligence of those on board the steamer, got aground upon the Sandwich Flats, the salvage claimed by the steamer was held to be entirely forfeited, upon the ground that the vessel had been led into a peril as great as that from which she had been rescued (*k*). In the American cases, *The Ashburton* and *The*

(*h*) Per Dr. Lushington, *The Cape Packet*, 3 W. Roh. 122-125. See also *The Perla*, Swa. 230; *The Prins Frederik*, 2 Dods. 451. As to the responsibility of salvors for the negligence or misconduct of their agents, see *The Atlas*, 1 Lush. 518-527.

(*i*) *The Magdalen*, 31 L. J. N. S. Ad. 22. See also *The Perla*, *ubi supra*; *The Dygden*, 1 Notes of Cases, 115.

(*k*) *The Duke of Manchester* (on appeal) 5 Notes of Cases, 470.

*Sultan* (*l*), considerable deductions were made from the salvage awarded in consequence of the property having been injured through the salvors having neglected to take proper soundings; and in *The Diadem* (*m*), their remuneration was similarly diminished in consequence of their having improperly used hawsers instead of chains to the anchors where they had reason to think that the hawsers would be cut by the rocks.

If, in consequence of the unskilfulness or negligence of those on board her, the salving vessel should come into collision with the vessel which she is endeavouring to assist, she will be held liable in damages as in an ordinary case of collision. Thus where the steamer *Thetis* fell in with the steamer *Sardis* which had been disabled in consequence of an accident to her machinery, and, in endeavouring to tow her into port for an agreed sum, negligently came into collision with and sunk the disabled vessel, she was held to be solely blamable, and condemned in damages (*n*).

If the salvors employ an agent to assist them in the undertaking, and the property saved sustains any loss in consequence of the negligence or unskilfulness of the agent, the salvors, however innocent they may be, and however meritorious as to their own acts, must still suffer for it in the diminished amount of compensation (*o*). If, however, the services of the

Collision whilst engaged in salving.

(*l*) Marvin, 235.

(*m*) Marvin, 236.

(*n*) *The Thetis*, L. R. 2 Ad. 365.

(*o*) Per Sir John Coleridge, *The Atlas*, Lush. 518-529. See *The Bomarsund*, Ibid. 77; *The Duke of Manchester*, 2 W. Rob. 470.

CHAP. VII. If the salvor terminate before the negligent act of the third party takes place, then, as he would not under such circumstances be acting as their agent, they would not of course be answerable for his misconduct. Thus where a set of salvors brought a vessel into a position of safety from ordinary peril but not to anchor, and then gave her in charge to a licensed pilot, it was held that they were not prejudiced in their claim for salvage by injuries subsequently caused to the ship through the negligence of the pilot (*p*).

American law as to responsibility of owner of salving vessel for unworthiness.

The question has been discussed in America as to how far the owner of the salving vessel is responsible for losses sustained by the property saved through the unseaworthiness of his vessel or the misconduct of his crew; and it has been held that although the owner of an ordinary trading vessel would not be liable for such consequences (*q*), a different rule prevails with regard to a licensed wrecking vessel. There the master and crew are employed by the owner for the sole purpose of assisting vessels in distress, and he is liable for any misconduct by them in the course of their employment. Whoever the salvors may be, whether licensed wreckers or not, they are not only bound to be scrupulously honest themselves, but, whilst the property is in their custody, they are expected to employ every reasonable degree of diligence to guard it from plunder by others; and any negligence in this respect will affect the amount of their remuneration (*r*).

(*p*) *The Bomarsund*, 1 Lush. 77.

(*q*) *The Mullhouse*, 22 American L. R. 276; *The Pacific*, *Ibid.* 289.

(*r*) *The John Perkins*, 19 American L. R. 490.

## CHAPTER VIII.

### DETENTION OF PROPERTY BY SALVORS.

IT has been held at common law that where salvage is effected on the high seas, the salvor is entitled to retain possession of the property saved until his claim has been satisfied (*a*). This right of the salvor has also been recognised in the Court of Admiralty, but to a much more limited extent, that Court looking to all the circumstances of the case, and regarding the necessity that may exist for detaining the property as a means of securing the claims of the salvor as the very foundation of the right (*b*). The Merchant Shipping Acts, whilst they provide for the security of the salvor, have also, as will be presently seen, still further restricted his right to retain possession of the property he saves.

It has been laid down that when once a vessel has been abandoned by her master and crew in consequence of real danger for the purpose of saving

CHAP. VIII.

Detention  
of property  
by salvors.

Common  
law posses-  
sory lieu.

(*a*) *Hartfort v. Jones*, 1 Lord Raymond, 393. See also *Nicholson v. Chapman*, 2 H. Black. 254; *The Nikolai Heinrich*, 17 Jurist, 329. See also the following American cases to the same effect: *The Royal William*, Stewart's Vice-Ad. Rep. 111; *The Bee*, Ware, 336; *Lewis v. The Elizabeth and Jane*, Ibid. 33; *The John Gilpin*, Olcott, 77; *Baker v. Hong*, 3 Barb. S. C. Rep. 203. See *New York Rep.*

Retaining  
possession  
of derelict.

(*b*) *The Glasgow Packet*, 2 W. Rob. 306, §12, 313. *F.M.*

CHAP. VIII. their lives, then whatever persons first get possession of that vessel and are competent to render salvage service, have a right to retain possession of her until she is either voluntarily given up, or they are divested by due course of law (*c*), and salvors have, under special circumstances, been considered justified in taking the vessel into port without delaying to take on board the crew which had abandoned her (*d*); and they have also, under special circumstances, been held entitled to retain possession of a vessel found derelict though the master and crew return to her (*e*). The retention of the exclusive possession and control of the vessel by the salvors where the master and crew reappear can, however, only be justified by necessity (*f*); and the right of the salvors in this respect is one depending so entirely upon the peculiar circumstances of each case, that the Court has refused to lay down any general rule upon the subject (*g*).

In *The Cleopatra* (*h*), that vessel was found by the salving vessel, *The Gallicia*, on her beam-ends in the trough of the sea, her port gunwale awash and the sea breaking over her, apparently sinking, and her crew about to leave her. The crew were got on board *The Gallicia*, and *The Cleopatra* was towed into harbour. In answer to the claim of the salvors

(*c*) *The Tritonia*, 5 Notes of Cases, Supp. ii. See also *The Dantzig Packet*, 3 Hagg. 383-385.

(*d*) *The Orbona*, 1 Spinks, 161-165.

(*e*) *The Gertrude*, 30 L. J. Ad. 130.

(*f*) S. C. Dr. Lushington: "It is expedient, however, where it can be done, to permit a master and crew to approach their own ship."

(*g*) *The Cleopatra*, 37 L. J. Ad. 31.

(*h*) *Ibid.*

it was stated that the master of the *Gallicia* refused to allow the master and crew of the *Cleopatra* to return to her on the morning after they were taken off, and that the vessel in consequence incurred certain risk. The Court, however, does not seem to have been influenced by the objection, as it held the salvage to be a meritorious one, and gave the salvors £5000, the value of the ship, freight, and cargo being £24,000.

If, however, the vessel be not a derelict, as where, for instance, the master and crew leave her for the purpose of obtaining and returning with assistance, and without the intention of abandoning her, the occupying salvor is bound to submit himself to the orders of the master when he appears and claims his authority. The master, under such circumstances, is entitled to resume charge of the vessel, to employ whom he pleases, and to take what measures he thinks fit for the preservation of the ship (*h*).

As between the salvors and the owners of the salving ship, it has been held that the property saved or the remuneration awarded for it ought, until distribution, to be in the custody of the salvors, and not in that of the owners of the salving vessel (*i*).

The salvors' title to remuneration and their maritime lien on the vessel saved is not in any way impaired or affected by their giving up possession to the owner (*j*); and when once the salvage has been

(*h*) Judgment of Dr. Lushington, *The Champion*, Br. & Lush. 69—71.

(*i*) *The Princess Helena*, 30 L. J. Ad. 137-140.

(*j*) *The Eleanora Charlotta*, 1 Hagg. 156. Lord Stowell : “It is an ill-founded and absurd notion that unless salvors stick

Salvors entitled to custody as between them and their owners.

When salvor to give up possession.

CHAP. VIII. completed and the vessel brought into port, the salvors will not be justified in retaining possession for any greater length of time than may be necessary for the purpose of securing their demands against the owner. This necessity the Court of Admiralty regards as the very foundation of the right (*k*); and it has even gone so far as to hold salvage to be entirely forfeited on the ground, among others, that the salvor had improperly kept possession of the property saved instead of delivering it up to an agent of the owner who was on the spot (*l*).

Detention  
and release  
by Receiver  
of Wreck  
where sal-  
vage pro-  
perty within  
the United  
Kingdom.

Where the ship or property saved is brought into the United Kingdom, the Receiver of Wreck is, by the following sections of the Merchant Shipping Act, 1854, empowered to detain the property until the salvage claimed has been paid or security given:—

“ Whenever any salvage is due to any person under this Act the Receiver shall act as follows (that is to say):

“(1.) If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof, he shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by

by the ship, they forfeit or at least impair their title to remuneration. It is very desirable that salvors generally should know that, in order to maintain their rights, it is perfectly unnecessary to remain on board the vessel which may have received their assistance. See the American cases, *The H. D. Bacon*, 1 Newb. 274; *The Emblin*, Daveis, 61.

(*k*) *The Glasgow Packet*, 2 W. Rob. 306, pp. 312, 313.

(*l*) *The Lady Worsley*, 2 Spinks, 253. See also *The Towan*, 8 Jurist, 220.

some competent court for the detention of such ship, CHAP. VIII. boat, cargo, or apparel.

"(2.) If the same is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained, he shall detain such wreck until payment is made, or process has been issued in manner aforesaid.

"But it shall be lawful for the Receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid; and in cases where the claim for salvage exceeds £200, it shall be lawful in England for the High Court of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties; and in all cases where bond or other security is given to the Receiver for an amount exceeding £200, it shall be lawful for the salvor or for the owner of the property salved, or their respective agents, to institute proceedings in such last mentioned courts for the purpose of having the questions arising between them adjudicated upon, and the said courts may enforce payment of the said bond or other security in the same manner as if bail had been given in the said courts" (m).

(m) 17 & 18 Vict. c. 104, s. 468. By the 412th section of the new Merchant Shipping Code, it is proposed to alter the foregoing provisions, by conferring upon the Receiver a general authority

CHAP. VIII. By a subsequent section (*n*) it is provided that where the salvor voluntarily agrees to abandon his lien upon the ship, cargo, and property alleged to be salved upon the master or other person in charge thereof entering into a written agreement, attested by two witnesses, to abide by the decision of the High Court of Admiralty, or of any Vice-Admiralty Court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the agreement, such agreement shall bind the said ship and the said cargo, and the freight payable therefor respectively, and the respective owners of the said ship, freight, and cargo for the time being, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo, and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced by the High Court of Admiralty or any Vice-Admiralty Court agreed upon. The salvor and the master of the vessel saved, when such an agreement is entered into, are to forward to the Court which has to adjudicate upon the agreement state-

to "seize any property found within his district, and alleged to be liable for salvage," and "to detain the property until the claim is satisfied, the property released by a competent court, or security to the satisfaction of the Receiver given for the salvage, fees and costs." Any question as to the amount of the security or the sufficiency of the sureties is to be determined, in cases where the value is under £50, by the Receiver, and above £50, by the local Court of Admiralty for the district, and the value is to be determined by the Receiver, if no valuation has been made. The security is to be enforced by "any Court competent to entertain a suit for salvage," and in claims over which the Receiver is to have jurisdiction, by the local Court of Admiralty for the district.

(*n*) 17 & 18 Vict. c. 104, s. 497.

ments concerning the nature of the service, the value CHAP. VIII. of the ship, of the property saved, &c., such as are required in the case of salvage by Her Majesty's ships abroad (*o*), but with this difference, that they need not be made upon oath (*p*).

Where the Court of Admiralty orders the release of a vessel, instantaneous obedience must be paid to it; and if the salvors seek to retain the possession of the vessel after production to them of the release, an attachment will be issued against them (*q*). And if the Receiver of Wreck release the property, the salvors, after such release, have no right to detain it or to arrest it by warrant of the Court of Admiralty. Should they do so the Court will, on motion of the owners, grant the release and condemn the salvors in costs (*r*).

The right of salvors to retain possession of property saved is also subject to those sections of the

(*o*) 17 & 18 Vict. c. 104, s. 486. And see, *post*.

(*p*) 17 & 18 Vict. c. 104, s. 497. By the 416th section of the new Merchant Shipping Code, the above provisions are in substance re-enacted. The changes proposed to be made in the law by this section are very slight. Instead of any provision for security, the agreement itself is to bind the property to the extent specified. The agreement is to be enforceable in the court named in it, and for that purpose any court having Admiralty jurisdiction is to have all the powers of the superior Court of Admiralty, and the High Court of Admiralty of England is to have authority to enforce such agreements in any Vice-Admiralty Court in any part of the Queen's dominions, and all Courts exercising Admiralty jurisdiction in the United Kingdom, the Channel Islands, and the Isle of Man, are to aid the High Court of Admiralty in enforcing the same. The statements to be forwarded to the Court are in the 2nd schedule to the Code, but differ in no way from those provided for by the existing law, with this exception, that the statement of the master's willingness to execute the prescribed bond is omitted.

(*q*) *The Towan*, 8 Jur. 220.

(*r*) *The Lady Catherine Braham*, Lush. 404.

Refusal to  
obey order  
of Court for  
release.

No arrest or  
detention  
after release  
by Receiver  
of Wreck.

**CHAP. VIII.** Merchant Shipping Act which require the delivery of such property, in certain cases, to the Receiver of Wreck of the district. By the 443rd section it is provided, that all cargo and other articles belonging to any ship or boat stranded or in distress at any place on the shore of the sea or of any tidal water within the limits of the United Kingdom that may be washed on shore or otherwise lost or taken from such ship or boat, shall be delivered to the Receiver, and that any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the Receiver or to any person authorised by him to demand the same, shall incur a penalty not exceeding £100, and that it shall be lawful for such Receiver or other person to take such cargo or article by force from the person so refusing to deliver the same (s).

**Delivery to Receiver, of Wreck found.** By a subsequent section it is provided with respect to wreck, that if it be found or taken possession of by any person other than the owner, he is, as soon as possible, to deliver it to the Receiver under penalty of forfeiting all claim to salvage, double the value of the wreck, and a fine not exceeding £100; and if the person finding or taking possession of the wreck be the owner, he is bound, under a penalty of £100, to give notice of the fact to the Receiver as soon as possible (t). The Receiver is also empowered (upon obtaining a search warrant) to search for and seize any wreck that may be secreted (u).

(s) 17 & 18 Vict. c. 104, ss. 441—443.

(t) Ibid. s. 450.

(u) See 17 & 18 Vict. c. 104, s. 451. Under the 452nd section,

Where salvage services are rendered by the commander or crew of any vessel of the Royal Navy to a ship on the high seas, the ship saved, "if the salvor is justified by the circumstances of the case in detaining it at all" (x), is to be taken to some port where there is a consular officer or Vice-Admiralty Court, and the salvor and the master of the vessel saved are each, within twenty-four hours after the arrival of the vessel in port, to furnish to the con-

it is the duty of the Receiver, within forty-eight hours after taking possession of wreck, to forward a description of it to the custom-house of the nearest port, and the Secretary of Lloyd's.

By the new Merchant Shipping Code, no change of much consequence is proposed to be made in the above provision as to the secreting of wreck. The 385th section makes the right of the owner to retain wreck in his own possession, subject to such conditions as the Board of Trade may impose, and gives a summary remedy for the recovery of the penalty where less than £50.

The 386th proposes to introduce the following new provisions:

Where any wreck is taken possession of at sea, beyond the limits of the United Kingdom, by any British ship or boat, the master of such ship or boat shall act as follows:—

(1.) If while the wreck is in his possession he touches at any port or place where there is a British consular officer, he shall make a report of the wreck to such consular officer, and shall conform to his directions in respect thereof:

(2.) If he arrives in the United Kingdom in possession of the wreck, he shall deliver it to the Receiver of the district in which the port or place at which he first arrives is situate:

(3.) If before he arrives in the United Kingdom he disposes of the wreck, whether under the direction of a consular officer or otherwise howsoever, he shall upon first arriving in the United Kingdom, give an account of the wreck, and of the manner, and of the price, if any, in and for which he has disposed of the same, to the Receiver of the district in which the port or place at which she first arrives is situate.

Any person making default in obeying the provisions of this section, shall be liable, on conviction, to pay as a penalty double the value of the wreck, and a further sum not exceeding £200, such penalty to be recoverable by summary proceedings or otherwise, so, however, that no penalty recovered summarily shall exceed £100.

(x) 17 & 18 Vict. c. 104, s. 486.

Release of  
vessel where  
salvage  
claimed by  
vessel of  
Royal Navy  
for services  
on high  
seas.

CHAP. VIII. sular officer or Vice-Admiralty judge a statement upon oath setting out—

(1.) The place, condition, and circumstances in which the said ship, cargo, or property was at the time when the services were rendered for which salvage is claimed.

(2.) The nature and duration of the services.

The salvor is to add to his statement:

(3.) The proportion of the value of the said ship, cargo, and property, and of the freight which he claims for salvage, or the values at which he estimates the said ship, freight, cargo, and property respectively, and the several amounts that he claims for salvage in respect of the same.

(4.) Any other circumstances he thinks relevant to the said claims.

The master or other person in charge of the said ship, cargo, or property is to add to his statement:

(5.) A copy of the certificate of registry of the said ship and of the indorsements thereon, stating any change which to his knowledge or belief has occurred in the particulars contained in such certificate, and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the incumbrances and certificates of mortgage or sale (if any) affecting the same, and the names and places of business of the owners and incumbrancers.

(6.) The name and place of business or residence of the freighter (if any) of the said ship,

and the freight to be paid for the voyage CHAP. VIII.  
she is then on.

- (7.) A general account of the quantity and nature of the cargo at the time the salvage services were rendered.
- (8.) The name and place of business or residence of the owner of such cargo, and of the consignee thereof.
- (9.) The values at which the said master estimates the said ship, cargo, and property, and the freight respectively, or, if he thinks fit, in lieu of such estimated value of the cargo, a copy of the ship's manifest.
- (10.) The amounts which the master thinks should be paid as salvage for the services rendered.
- (11.) An accurate list of the property saved in cases where the ship is not saved.
- (12.) An account of the proceeds of the sale of the said ship, cargo, or property in cases where the same or any of them are sold at such port as aforesaid.
- (13.) The number, capacities, and condition of the crew of the said ship at the time the said services were rendered.
- (14.) Any other circumstances he thinks relevant to the matters in question.
- (15.) A statement of his willingness to execute a bond in the form (W.) given in the schedule to the statute, in such amount as the officer or judge may fix (y).

CHAP. VIII. Within four days after receiving these statements the officer or judge determines the sum for which the bond to the salvor is to be given, the amount not to exceed half the value of the property, and sends notice of the sum so fixed to the salvor and master. He may proceed *ex parte* if either of the above statements is not delivered to him within the 24 hours; but he shall in no case under the Act require the cargo to be unladen (*z*). If the vessel be a British ship her detention by the salvor is to cease upon the bond (which is to be attested by the consular officer or judge) being signed by the master (*a*). The bond, which if signed abroad is exempt from stamp duty (*b*), binds the owners of the ship, freight, and cargo for the salvage afterwards awarded (*c*). In the case, however, of vessels owned by persons not domiciled in the Queen's dominions, the salvor is entitled to retain possession until the master, in addition to the bond, procures such security for the due performance of its conditions as the officer or judge considers sufficient, and deposits the security with the officer or judge, or with him jointly with any other person whom the salvor may appoint (*d*). If the salvor and the master of the vessel saved agree (*e*) that the bond should be adjudicated upon in any Vice-Admiralty Court, the officer or judge is, at the earliest opportunity, to transmit to such Court, or, in the absence of such agreement, to the High Court of Admiralty

(*z*) 17 & 18 Vict. c. 104, s. 487.

(*a*) Ibid. ss. 488, 489.

(*b*) Ibid. s. 495.

(*c*) Ibid. s. 491.

(*d*) Ibid. s. 489.

(*e*) Ibid. s. 490.

n England, the statements and documents handed CHAP. VIII. to him, together with a notice of the amount of the bond fixed upon by him (*f*). The Court to which the documents are so sent is empowered to adjudicate upon and enforce the bond, and to deal with any security that may have been given (*g*).

The bond may be proved by the evidence of any <sup>Proof of</sup>  
one able to bear witness to the requisite facts, without calling the attesting witness (*h*).

If the salvor should elect not to proceed as above, <sup>Salvor not to detain vessel unless he proceeds as above.</sup> he has no power to detain the vessel or property. He may, however, take other proceedings to enforce his claim as if the Act had not passed (*i*).

(*f*) The agreement when signed abroad, is exempt from stamp duty, 17 & 18 Vict. c. 104, s. 495.

(*g*) 17 & 18 Vict. c. 104, ss. 492, 493.

(*h*) Ibid. s. 526.

(*i*) 17 & 18 Vict. c. 104, ss. 492, 494. By the 418th section of the new Merchant Shipping Code, an important alteration is proposed to be made in the foregoing provision. The salvor is no longer to be authorised to detain the vessel or take her into a port where there is a Vice-Admiralty judge or consul. He is to make and sign, and to require the master of the vessel saved to make and sign a statement containing the particulars already set out. If the master should refuse to make the required statement, then the vessel may be detained until the statement is made, or security for the salvage to the satisfaction of the consular officer or judge given. The statement to be evidence on behalf of the Admiralty of all matters contained in it, and any person making a false representation in it is to be guilty of perjury.

## CHAPTER IX.

### PROCEEDINGS TO RECOVER SALVAGE.

CHAP. IX. THE salvor may, according to the amount claimed, or the value of the property, sue for the recovery of salvage by proceedings in the High Court of Admiralty, or in a county court possessing Admiralty jurisdiction, or before two justices of the peace (*a*).

#### *Jurisdiction and Practice of the High Court of Admiralty.*

The Court of Admiralty has jurisdiction to entertain suits for salvage wherever the service may have been rendered. It formerly could not entertain a salvage suit unless the salvage took place on the high seas (*b*). This restriction was, however, removed by an Act passed in the early years of the present reign (*c*), which gave to the Court "jurisdiction to decide all claims and demands whatsoever in the nature of salvage, for services rendered to any

Action at law for salvage.

(*a*) As to when an action at law will lie for salvage, see *Nicholson v. Chapman*, 2 H. Blackstone, 254; *Lipson v. Harrison*, 22 L. T. 83; *Castellaine v. Thompson*, 13 C. B. N. S. 105; *Newman v. Walters*, 3 B. & P. 612; Chitty on Pleading, 6th edit. vol. ii. p. 49.

(*b*) *The Two Friends*, 1 C. Rob. 271.

(*c*) 3 & 4 Vict. c. 65, s. 6.

ship or sea-going vessel, or in the nature of towage, and to enforce the payment thereof, whether such ship or vessel was within the body of a county or upon the high seas at the time when the services were rendered;" and by a subsequent statute (*d*) it was provided that, subject to certain restrictions, (that is to say, now where the value of the property saved is over £1,000, and the claim for salvage is over £200,) "the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place, and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land" (*e*).

The Court of Admiralty had, as has been pointed out in a previous chapter (*f*), formerly no jurisdiction to award compensation for life salvage when not connected with the salvage of property. This has been remedied in the Merchant Shipping Act, 1854, which enables the Court to decree a reasonable amount of salvage to those who render assistance in saving the lives of the persons belonging to any ship or boat stranded or in distress on the shore of any sea or tidal water within the limits of

(*d*) 17 & 18 Vict. c. 104, s. 476.

(*e*) The High Court of Admiralty has a concurrent jurisdiction as to salvage within the boundary of the Cinque Ports, and it remains unaffected by this Act (*The Maria Luisa*, Swa. 67). As to the jurisdiction of these ports in salvage cases, see 1 & 2 Geo. 4, c. 76. By the 426th section of the new Merchant Shipping Code, it is proposed to abolish the local jurisdiction of the Cinque Ports in salvage cases.

(*f*) Chap. 1, *ante*, p. 16.

CHAP. IX. the United Kingdom (*g*). By a subsequent statute (*h*) these provisions were extended to cases of life salvage from a British ship or boat, wheresoever the service might have been rendered, and from any foreign ship and boat where the services have been rendered, either wholly or in part, in British waters.

These sections have been held to apply to the preservation of the lives of the passengers belonging to a ship, and to be not confined to those of the seamen (*i*).

Certificate  
for costs,  
where ne-  
cessary.

By the 460th section of the Merchant Shipping Act, 1854 (*k*), it is provided that if salvors, suing in the High Court of Admiralty, do not recover a greater sum than £200, they shall not recover any costs, unless the Court certifies that the case is a fit one to be tried in a superior court (*l*); and this restriction is still further increased by the recent Act conferring Admiralty jurisdiction upon the County Courts, the 9th section of which provides that "if any person shall take in the High Court of Admiralty of England, or in any superior court proceedings which he might without agreement have taken in a county court, except by order of the judge of the High Court of Admiralty, or of such superior court or of a county court having Admiralty jurisdiction, and shall not recover a sum exceeding the amount (in claims for salvage, £300) to which the jurisdiction of the County Court in that Admiralty cause is limited by this Act; and also, if

(*g*) 17 & 18 Vict. c. 104, s. 458.

(*h*) 24 Vict. c. 10, s. 9.

(*i*) *The Fusileer*, 34 L. J. Ad. 25.

(*k*) 17 & 18 Vict. c. 104, s. 460.

(*l*) *Ibid.*

any person, without agreement, shall, except by CHAP. IX. order as aforesaid, take proceedings as to salvage in the High Court of Admiralty, or in any superior Court, in respect of property saved, the value of which when saved does not exceed £1,000, he shall not be entitled to costs, and shall be liable to be condemned in costs, unless the judge of the High Court of Admiralty, or of a superior Court before whom the cause is tried or heard, shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England, or in a superior Court (*m*).

In the absence of special circumstances, the Court has frequently refused to certify, so as to entitle the salvors to costs (*n*); but it has been said that the Court will certify when there are circumstances of difficulty or peculiarity, such as questions upon the construction or effect of an agreement made at sea, or where there is only one justice on the spot, and he an interested party (*o*), or where unfounded charges of misconduct are made against the salvors (*p*). It has granted a certificate where the captain of the vessel salved sailed away, having refused to give the names and addresses of her

(*m*) 31 & 32 Vict. c. 71, s. 9.

(*n*) *The Fenix*, Swa. 13; *The William and John*, Br. & L. 49; *The Minnehaha*, Lush. 335. See *The Comte Nesselrode*, where, there being no special circumstances, the Court refused to certify for costs, notwithstanding it awarded the salvors £100 instead of £40, which had been tendered.

(*o*) *The John*, Lush. 11—13.

(*p*) *The Fenix*, 13—16. It is to be observed, however, that now that the jurisdiction of the County Courts in salvage cases has almost, if not entirely, supplanted that of the justices, the Court of Admiralty may require a stronger case for certificate to be made out than it did when the Court of the justices was the only one that shared its jurisdiction.

CHAP. IX. owners, and the salvors afterwards sued in the High Court of Admiralty, and were awarded only £50 (*q*), and also where the Court pronounced a tender for £282 sufficient. In that case the Court took into consideration the small difference between the sum tendered and the limits of the County Court jurisdiction (£300) (*r*).

Leave to sue in Admiralty Court. By the ninth section of the County Courts Admiralty Jurisdiction Act (*s*), power is reserved to the Court of Admiralty to allow causes which might have been brought in the County Court to be instituted in that Court. The Court has, in the exercise of this power, in several instances, given such leave to institute causes where the amount claimed brought the case within the jurisdiction of the County Court.

It has allowed a suit for salvage to be so instituted where the salving vessel had entered into an agreement to tow the other vessel for a specific sum, and claimed salvage on the ground, that after the making of the contract the difficulty of the enterprise increased, so that she became entitled to salvage; and it was suggested that a question of law would arise as to whether, under the circumstances of the case,

(*q*) *The Alpha*, Lush. 89. But see *The John*, Lush. 11, where the master, without any *mala fides*, and after the salvors had an opportunity of having the case adjudicated upon by the local magistrates, took the vessel to London, the Court of Admiralty refused to certify. See also *The Minnehaha*, where the Privy Council, in awarding salvors £50, certified that the case was a proper one to be tried in a superior court, Lush. 335—354. And see *The Cherubim*, Irish 19 L. T. N. S. 52; *The Nicolai Heinrich*, 17 Jurist, 329.

(*r*) *The Hickman*, 3 L. R. Ad. 15. See also as to certificate for costs, *The Young James*, Ibid. 1.

(*s*) 31 & 32 Vict. c. 71, s. 9. See also sections 6, 7, & 8.

the towage contract was superseded by a right to CHAP. IX.  
salvage (*t*).

*Proceedings in a Salvage Suit.*

*Arrest of the Res.*

A suit in the Court of Admiralty may be either *in personam* or *in rem*. Salvage suits are almost invariably of the latter class. The cause is commenced by filing in the Registry of the Court a *præcipe* to institute (*u*). This document is headed with the name of the Court, and the number and name of the cause. It states the nature of the cause, the names, addresses, and descriptions of the plaintiffs ; the name of the ship, or the description of the property proceeded against, and the amount of the claim, which should be put at a sum sufficient to cover the demand, and the probable costs (*x*) of the suit (*y*).

The *præcipe* must also give an address for service within three miles of the General Post-office (*z*).

The next step is to obtain the arrest of the property. <sup>Arrest of the property.</sup> For this purpose a *præcipe for a warrant*, and an *warrant*.

(*t*) *The Bengal*, L. R. 3 Ad. 14.

(*u*) See form, *post*.

(*x*) £300 is generally added to cover costs.

(*y*) Ad. Rules, 5, 6. The plaintiff should claim sufficient, as in the event of the vessel being released on bail, the Court will not ordinarily direct the bail to be increased. He must, however, be careful not to claim too much, as the Court looks with disfavour upon exorbitant demands, and may withhold costs, or even condemn the plaintiff in them, when the cause is instituted for an excessive sum. See *The Earl Grey*, 1 Spinks, 180 ; *The Chieftain*, 32 L. J. Ad. 106 ; and see *The Victor*, Lush. 72 ; *The Temiscouata*, 2 Spinks, 208. See further as to the practice of the Court, the works of Messrs. Williams and Bruce, and Mr. Coote on the subject.

(*z*) Ad. Rules, 7.

CHAP. IX. *affidavit to lead the warrant*, are prepared. The præcipe contains particulars similar to those set forth in the præcipe to institute, and prays that the warrant to arrest may issue. The affidavit sets forth the names and descriptions of the plaintiffs, the nature of the claim, the name or nature of the property, and the fact that the claim is unsatisfied. On these documents being filed, the warrant issues, directed to, and must be served by, the Marshal of the Court, or his substitute (*a*). A *præcipe for service*, describing the property, stating where it is situated, and praying that it may be arrested (*b*), is then left at the Marshal's office; and the service, which must be made within six mouths from the date of the warrant (*c*), is effected in the case of a ship by affixing the original warrant for a short time to the mainmast, and there leaving the copy affixed in its stead. This arrest extends not only to the ship, but to its appurtenances, and even sails and rigging taken ashore for safe custody (*d*). If freight be proceeded against, the cargo on board may be arrested as a security for what is due (*e*). If it be on board the ship it is arrested with the ship. If warehoused a separate arrest is made (*f*).

(*a*) See Ad. Rules, 8 to 14. A detainer may be obtained to detain property where it is likely to be removed out of the jurisdiction before the warrant can be served by the Marshal. It does not continue in force after three days from date, or after service of warrant. It is, however, seldom resorted to, as the Marshal generally proceeds with promptitude. See Ad. Rules, 15.

(*b*) See form, *post*.

(*c*) Ad. Rules, 166, 167, 168.

(*d*) *The Alexander*, 1 Dods. 278; *The Dundee*, 1 Hagg. 109-124.

(*e*) *The Leo*, Lush. 444; *The Lady Durham*, 3 Hagg. 196-200.

(*f*) As to the effect of arrest on those claiming to have possessory liens, see *The Harmonie*, 1 W. Rob. 179; *The Nords-*

Once the vessel is arrested it cannot be removed without the order of the Court (*g*), and any person interfering with the arrest without this order may be attached (*h*). The Marshal, on the warrant being executed, endorses on it a certificate of the service. This is forwarded to the plaintiff's solicitor, who must file it in the Registry (*i*) within six days of the service, accompanied by a minute stating the nature of the document, and the date of filing it (*k*).

If the property be already under arrest, then, instead of a warrant, the plaintiff's solicitor obtains, in the same way as he would a warrant, *a citation in rem*. This document, which contains particulars nearly similar to those in the warrant, and is served, and the return filed, in the same way, directs the Marshal to cite all persons claiming to be interested in the property, to enter an appearance in the cause within six days. The plaintiff's solicitor takes out at the same time as the *citation in rem* a caveat against the release of the property, and has it entered in the caveat release book. The caveat release remains in force for six months, and operates to prevent the release of the vessel without notice to the party entering it (*l*).

*jernen*, Swa. 260; *The Flora*, 1 Hagg. 298; *The Bloomer*, 11 L. T. N. S. 46; and the American cases, *Taylor v. Carryl*, 20 How. 583; *Certain Logs of Mahogany*, 2 Sumn. 589.

(*g*) Ad. Rules, 46.

(*h*) *The Petrel*, 3 Hagg. 299; *The Lady Blessington*, 34 L. J. Ad. 73; *The Bure*, 14 Jurist, 1123; *The Westmoreland*, 4 Notes of Cases, 173.

(*i*) Ad. Rules, 14.

(*k*) See Ad. Rules, 14, 172, 160.

(*l*) See Ad. Rules, 16, 17, 174. See for the practice where the owner of the property wishes to enter a caveat against the issue of a warrant of arrest, Ad. Rules, 55, 56, 57, 58, 59, 60, and 61, 174, 175, 176.

## CHAP. IX.

*Appearance.*

Who may appear.

Any person having an interest in the property proceeded against may appear and defend. Mortgagees (*m*) of a ship, assignees of a bankrupt owner (*n*), underwriters who had accepted the abandonment of insured property (*o*), and seamen whose wages might be affected by the proceedings, have been held entitled to appear (*p*).

Persons whose interest is merely collateral, however, and who have no interest in the subject-matter of the proceedings, are not allowed to intervene (*q*).

Time for appearance.

The rules require that the appearance should be entered within six days after service of the warrant; but the plaintiff cannot proceed to judgment for default of appearance until twelve days after the filing of the warrant (*r*). Leave to appear, may, as a general rule, be obtained at any stage of the proceedings on motion or summons; but the judge may impose terms where the party applying has been guilty of laches.

How entered.

The appearance is entered by filing in the Registry a praecipe to enter an appearance, a copy of which must have been previously served on the plaintiff's solicitor. The praecipe contains the title, number, and name of the cause; the name, address, and

(*m*) *The Julindur*, 1 Spinks, 71.

(*n*) *The Dowthorpe*, 2 W. Rob. 73. See *The St. Catherine*, 3 Hagg. 251.

(*o*) *The Regina del Mare*, B. & L. 315; *The Cargo ex Galam*, Ibid. 167.

(*p*) *The Union*, Lush. 128.

(*q*) *The Killarney*, Lush. 427; *The Dowthorpe*, *ubi supra*. As to the practice where there are several claimants, see *The Clara*, Swa. 1; *The William Hutt*, Lush. 25.

(*r*) Ad. Rules, 38, 19.

description of the party appearing, and the capacity in which he appears; the name, address, and description of the plaintiff; a description of the property proceeded against, and an address for service within three miles of the General Post-office (s).

Where the defendant intends to object to the jurisdiction of the Court he appears under protest. <sup>Appearance under protest.</sup> This is done by inserting in the ordinary praecipe for appearance the words "under protest" (t). The defendant within twelve days afterwards files his petition on protest, the pleadings then proceed as in other cases (u), and the Court decides whether the case is to go on or judgment be given for the defendant on the petition on protest, which puts an end to the cause. The more usual course, however, where the objection can be raised on the plaintiff's petition, is to move to reject it (x).

Where no appearance has been entered within twelve days from the filing of the warrant, or a further period of six days from the advertisement of notice of sale, the Court, upon being satisfied that the claim of the plaintiff is well founded, will order the property to be appraised and sold, and the proceeds to be paid into the Registry. <sup>Proceedings for default of appearance.</sup>

The plaintiff, to obtain the sale, files in the Registry a praecipe praying a notice of the sale. The notice of sale, which is issued and signed by the

(s) See Ad. Rules, 35, 36, 37, 38.

(t) See Ad. Rules, 36.

(u) See Ad. Rules, 70.

(x) *The Great Eastern*, L. R. 1 Ad. 384; *The Sylph*, L. R. 2 Ad. 24. See on the same subject, *The Alexander Larsen*, 1 W. Rob. 288; *The Bold Buccleuch*, 7 Notes of Cases, 343; *The Eleonore*, B. & L. 185; *The Purissima Concepcion*, 7 Notes of Cases, 150.

CHEAP. IX. Registrar, is advertised in two or more public journals selected by the judge, generally the "Times," "Mercantile and Shipping Gazette," and a local journal. Notice of motion to have the property sold is then filed in the Registry, and the Court is moved by counsel upon an affidavit of the advertisements, and of no appearance. The plaintiff must be prepared with some proof of his claim, but the affidavit to lead the warrant will in most cases be found sufficient for the purpose.

A commission of sale and appraisement which is issued out of the Registry on the application of the plaintiff's solicitor, is then handed to the Marshal of the Court, who executes it and pays the proceeds into Court. The plaintiff may, within six days after the payment in, by filing a notice in the Registry, have the cause put in the list for hearing, and within the same time file his proofs, which in undefended causes need not be printed. The cause will then be heard on an early day, like a short cause in Chancery, and the Court may give final judgment and determine the rights of all parties interested (z).

#### *Release on Bail.*

Bail.

The defendant may, should he desire not to have the vessel detained until the termination of the suit, put in bail, or pay money into Court in lieu of bail.

Amount.

The amount of bail depends upon the value of the

(z) See Ad. Rules, 19, 20, 21, 22, 23, 25, 103, 124, 125, 126. See also *The Lady Blessington*, 34 L. J. Ad. 73; *The Afina Van Linge*, Swa. 514. See as to setting cause down as undefended in cases where a caveat warrant has been entered, Ad. Rules, 59, 60.

property, not the extent of the claim; and however large the amount claimed may be, the defendant is entitled to the release of his vessel on giving bail to the value. The plaintiff should see that bail is taken to the proper amount, as after the release of the vessel his only remedy is on the bail bond, and his lien on the property is gone (*a*). The value for the purpose of bail is generally agreed upon; the defendant may, however, insist on having the property appraised, and the appraisement is conclusive.

Upon a settlement of the case the bail may be discharged by order made in Court on motion to dismiss them from the suit. An allegation by the plaintiff filed in the Registry, however, to the effect that he proceeds no further in the action, is in practice generally considered enough.

Bail may be taken in the Registry or before a commissioner. The solicitor putting in bail files in the Marshal's office a praecipe for notice of bail, stating the amount, the name, address, and description of the party on whose behalf bail is put in; the names, addresses, and descriptions of the sureties and of their referees. Generally two sureties are required, and they must not be partners (*b*). The solicitor will then receive from the Marshal notice of bail, which must be served upon the opposite solicitor. The Marshal inquires into and reports on the sufficiency of the bail. The

*Discharge  
of sureties.*

(*a*) *The Kalamazoo*, 15 Jurist, 885. See also *The Temiscouata*, 2 Spinks, 208; *Nostra Senora del Carmine*, 1 Ibid. 303; *The Hero*, 13 W. R. 927; *The Volant*, 1 W. Rob. 383; *The Helene*, 35 L. J. Ad. 1; *The Flora*, L. R. 1 Ad. 45; and *The Johannes*, L. J. Notes, 29th April, 1870.

(*b*) *The Corner*, 33 L. J. Ad. 16.

CHAP. IX. plaintiff's solicitor may object to the sufficiency. If, however, the Marshal should report on the sufficiency, and no objection be taken, the bail bond may be executed after twenty-four hours from service of notice of bail, or sooner by consent.

Execution  
of bail  
bond.

A præcipe for the bail bond is filed at the Registry, accompanied by the notice of bail with service endorsed, and the report of the Marshal. The bond is then prepared in the Registry, and at the time appointed the parties attend there and execute it (*c*).

The bond may also be taken by a standing or special commission (*d*).

Payment of  
money into  
Court.

The release of the property may be obtained by paying into Court the amount claimed in the suit. If the cargo be arrested for freight, its release may be obtained by filing an affidavit of the value of the freight and paying in the sum, which is to be taken at the amount left after deducting the stipulated allowances, and the cost of paying in (*e*).

Valuation  
before re-  
lease.

The defendant is entitled as soon as the value of the property is ascertained, and the bail completed or the money paid into Court, to have the vessel released. In salvage cases the value must first be agreed, and the agreement filed, or if the parties do not agree an affidavit of value, made by some one acquainted with the value, must be made and filed. If the plaintiffs are dissatisfied with the affidavit of

(*c*) Ad. Rules, 39, 40, 41, 42, 43, 44, and 45; *The Tamarac*, Lush. 28.

(*d*) See

(*e*) See Ad. Rules, 48, 49, 127, and *The Victor*, Lush. 72; *The Leo*, Ibid. 444; *The North American*, Ibid. 79; *The Annie Childs*, Ibid. 509; *The Edmond*, Ibid. 211; *The Norway*, B. & L. 377.

value, they enter a caveat against the release, and the matter then comes before the Court, on motion to overrule the caveat, and the Court will, if the justice of the case requires it, order an appraisement to be made, and the vessel released on bail being given to the appraised value (*f*).

If the plaintiffs object to the sufficiency of the *Release*.  
sureties, the Conrt may either overrule the objection, or order new sureties to be found. In the absence of any objection to the security or value, the release is obtained from the Registry on filing a *præcipe* for release, which states the nature of the cause and property, &c., and the bail given, and no caveat against release entered. The release is then taken to the Marshal, who releases the property on payment of his fees (*g*).

The delaying the release of a vessel on insufficient grounds may be punished by the Court by the condemnation of the party in damages and costs (*h*). Delaying release.

#### *Pleadings.*

Pleading in the Admiralty Court is by petition <sup>Petition and answer.</sup> and answer. The petition should be filed in the Registry within twelve days after appearance, and the answer twelve days after the petition. As a general rule, the pleadings do not extend beyond replication. Each party, however, is at liberty, within six days after the filing of the answer, or any subsequent plead-

(*f*) See Ad. Rules, 50.

(*g*) Ad. Rules, 52, and see *The Towan*, 8 Jurist, 220; *The Helen*, 14 W. R. 502; *The Ironsides*, Lush. 458; *The Europa*, 9 L. T. N. S. 781.

(*h*) *The Corner*, 33 L. J. Ad. 16. See Ad. Rules, 53, 54, 174, 175, 176.

CHAP. IX. ing of his opponent, to file a further pleading in reply to that of the other side. In pleading each party should accurately set out the facts upon which he alleges, divided into paragraphs called articles (*i*). The Court will insist upon an adherence to the rule of proceeding *secundum allegata et probata*, and a party who fails to establish the case set up in his pleading will not be allowed to take the benefit of another state of facts, which may turn up on the evidence (*k*).

Conclusion. The party who has the right to plead further may file a conclusion to the pleading. In the event of his failing to do so within the time allowed for the next pleading, his opponent may file the conclusion. After the conclusion has been filed and served, no further pleading takes place in the cause without leave of the judge (*l*).

Time to plead. The time for pleading may be extended by the judge to any period, and by the Registrar until the next sitting of the judge in Chambers (*m*).

Each pleading must be signed by counsel and

(*i*) See Ad. Rules, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77.

(*k*) *The Peerless*, Lush. 103. See *The Despatch*, Ibid. 98; *The East Lothian*, Ibid. 241; *The Bothnia*, Ibid. 52; *The George Arkle*, Ibid. 222; *The North American*, Swa. 358; *The Schwalbe*, Ibid. 521; *The Haswell*, B. & L. 247; *The Amalia*, Ibid. 311; *The Laurel*, Ibid. 191; *The England*, 5 Notes of Cases, 170; *The Lady Anne*, 7 Ibid. 364-370; *The Mary Anne*, 4 Ibid. 376; *The Aurora*, 1 W. Rob. 322; *The Anne and Jane*, 2 W. Rob. 98; *The Hebe*, Ibid. 146; *The Glasgow Packet*, Ibid. 306; *The Virgil*, Ibid. 201-204; *The Speed*, Ibid. 225-227; *The Ironmaster*, 6 Jurist, N. S. 782; *The Clarence*, 1 Spinks, 206; *The Sylph*, L. R. 2 Ad. 24.

(*l*) See Ad. Rules, 74, 75.

(*m*) See Ad. Rules, 158.

solicitor, and a copy of it served on the opposite CHAP. IX.  
party (*n*).

If a pleading fail to show a sufficient ground of <sup>Objections to pleadings.</sup> action or defence, or be insufficient in form, the course is to move the Court to reject it on notice of motion (to be served four days before motion day), specifying the objections (*o*). The notice of motion, with a certificate of service, must be filed in the Registry. The Court, on hearing the motion, may hold the pleading to be sufficient, or reject it, or order it to be amended, and grant time for filing the amended pleading.

The plaintiff's solicitor is, within ten days after <sup>Printed copies.</sup> the filing of the conclusion, to have the whole of the pleadings printed, and printed copies deposited in the Registry. On his failing to do so, the defendant may move to have the cause dismissed with costs (*p*).

Should the defendant desire to make a formal <sup>Tender in Court.</sup> tender of the sum he considers sufficient to satisfy the plaintiff's demand, he may obtain at the Registry *a receivable order* authorising the payment into the Bank of England of the sum tendered. A receipt is given by the Bank for the amount, and a copy of the receipt, accompanied by a notice that the money paid in is tendered in the action, should be served on the plaintiff's solicitor, and the notice, with a certificate of the service endorsed, is then to be filed in the Registry (*q*).

In practice it is usual, before paying in the money,

(*n*) See Ad. Rules, 71, 72.

(*o*) See Ad. Rules, 77.

(*p*) See Ad. Rules, 98.

(*q*) See Ad. Rules, 127, 128, 129, 130.

CHAP. IX. to make a formal tender to the plaintiff, and serve him with a written notice of the tender. If the tender be accepted, the matter may be settled out of Court (*q*).

Costs.

The tender must either include an offer to pay costs up to the time or state that the tender relates to the claim only, and specify the grounds upon which costs are not tendered, referring that question to the consideration of the Court (*r*).

The tender is pleaded by the defendant, and the plaintiff replies. He has a right, however, before replying, to have the value of the property ascertained. If the plaintiff accepts the tender, the cause is at an end, and the money will be paid out, on the conclusion of the suit (*s*). If he refuses the amount, the cause goes on, and the Court decides upon the sufficiency of the amount; and if it holds it to be sufficient, it may either condemn the plaintiff in costs, or refuse him his costs (*t*).

(*q*) Williams and Bruce, Prac. 258, n.

(*r*) *The Hickman*, L. R. 3 Ad. 15-19. In this case the defendants tendered a specific amount, "together with such costs as may be due by law." The plaintiffs offered to take the sum offered, if paid their costs up to the day of tender, but this the defendants refused, insisting upon the sufficiency of the tender. The cause was heard, and the Court held the amount tendered to be sufficient. In dealing with the costs, the plaintiffs were awarded theirs up to the date of tender, but having regard to the uncertainty of the practice, each party was left to pay his own costs of the subsequent proceedings. See also as to costs in cases of tender, *The John*, Lush. 11; *The Sovereign*, Ibid. 85; *The Hope*, 2 W. Rob. 9; *The Mobile*, Swa. 256; *The Cargo ex Honor*, L. R. 1 Ad. 87; *The Frederick*, 1 Hagg. 211; *The Eleonora Charlotte*, Ibid. 159; *The Hedwig*, 1 Spinks. 19.

(*s*) *The Annie Childs*, Lush. 509.

(*t*) *The Vrouw Margaretha*, 4 C. Rob. 103; *The Clifton*, 3 Hagg. 117-125; *The William*, 5 Notes of Cases, 108.

*Evidence.*

CHAP. IX.

The evidence may be given by affidavit, deposition, or *vivâ voce* in Court, or partly by one mode, partly by the other. The solicitors of the parties may consent (by writing to be filed in the Registry), as to the mode in which the evidence shall be taken, or the judge, on the application of either at Chambers, will direct the mode of proof (*u*).

If either party wishes the evidence to be *vivâ voce* the Court will generally so order it (*x*).

"There are no peculiar rules as to affidavits in the *Affidavits*. Court of Admiralty. They may be sworn before one of the registrars, an examiner, or a commissioner to administer oaths in the Court of Admiralty, a commissioner in Chancery, a justice of the peace, and in Scotland, Ireland, or the Colonies before the persons by whom affidavits are usually taken (*y*).

Witnesses may be orally examined before the *Depositions*. Registrar, or an examiner of the Court, or a special examiner. When the examiner has given an appointment to proceed with the evidence, twenty-four hours' notice of the time, place, names and addresses of the witnesses, and name of the examiner should be served on the adverse solicitor.

To obtain the appointment of a special examiner an application must be made to the Court or the judge at Chambers for a commission, which, on the order being obtained, will be issued out of the Registry (*z*).

(*u*) See Ad. Rules, 78, 79, 81.

(*x*) See *Fyler v. Fyler*, 2 Spinks, 69; *The Swanland*, Ibid. 107; *The Resultatet*, 17 Jurist, 353; *The Glory*, 3 W. Rob. 187.

(*y*) See 3 & 4 Vict. c. 65, ss. 7 to 12; and see Ad. Rules, 83, 84, 85, and 86.

(*z*) See Ad. Rules, 87, 88, 89, 90, 91, 92, 93, 94, 95.

CHAP. IX. The attendance of witnesses may be enforced by subpœna to be issued out of the Registry (*a*).

The evidence may be taken down by a sworn shorthand writer of the Court, who will be appointed by the judge on the application of either party, and at the expense, in the first instance, of the person applying (*b*).

On an objection being taken to any question, the question and answer are taken down separately, and a note of the objection made.

Depositions  
taken before  
Receiver of  
Wreck.

By the 17 & 18 Vict. c. 104, sect. 449, it is provided that any examination taken in writing by the Receiver of Wreck, or by a justice, or a certified copy, should be admitted "in evidence in any court of justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, as *prima facie* proof of all matters contained in such written examination." Notwithstanding the wide terms used by the Legislature in this section, these depositions have been rejected as evidence in the Court of Admiralty, and in the courts of Common Law (*c*). In *The Little Lizzie* (*d*), Sir Robert Phillimore expressed it as his opinion that it could not have been intended by the Legislature that the plaintiffs in a salvage suit should have an opportunity of making use of statements made by witnesses whom the defendants have not had the opportunity of cross-examining.

Filing  
proof.

Either party may apply to the judge to fix a time

(*a*) See Ad. Rules, 173.

(*b*) See Ad. Rules, 94.

(*c*) *Northard v. Piper*, 17 C. B. (N. S.) 39; *M'Allum v. Reid*, L. R. 3 Ad. 57, n. 3; *The Little Lizzie*, L. R. 3 Ad. 56.

(*d*) *Ubi supra*.

for filing proofs, and the proofs of each side must be CHAP. IX.  
filed within that time (e).

In contested causes, unless the judge should <sup>Printing evidence.</sup> order the contrary, all the written evidence must be printed. Each solicitor is to lodge in the Registry printed copies of his evidence within six days of the day for filing, when it consists of affidavits, and within twelve days when it consists of affidavits and depositions, or depositions alone. One hundred and fifty copies are printed; seventy of which are to be deposited in the Registry, and forty handed to the opposite solicitor.

### *The Hearing.*

The cause may be placed on the list for hearing after the time for depositing printed proofs has expired, or after the cause has been directed to be heard wholly on oral evidence (f).

The cause will be heard by the judge alone, or <sup>Trinity Masters.</sup> assisted by Trinity Masters. The order for the attendance of Trinity Masters is to be obtained on motion, and will be granted, if both parties concur in asking it, as a matter of course; and where only one applies, if the Court, in its discretion, should see fit to direct it (g).

A view by the Trinity Masters may be directed by <sup>View.</sup> the Court on the application of either party (h).

At the hearing there are no opening statements made, the Court at once proceeds to the evidence,

(e) See Ad. Rules, 80.

(f) See Ad. Rules, 103, 104, 105, 106.

(g) *The How/handel*, 1 Spinks, 25-27; *The Princess Alice*, 3 W. Rob. 138, 139; *The James Dixon*, 2 L. T. N. S. 696; *The Vargas*, 15 Jurist, 710.

(h) Ad. Court Act, 1861, s. 18.

CHAP. IX. which, when *vivâ voce*, is taken in the same manner as at Nisi Prius. The witnesses are kept out of Court until called for examination. When the evidence is *vivâ voce* only one counsel addresses the Court ; but when on deposition two on each side are heard.

Cross-examination by rival salvors.

Where there are two sets of salvors claiming salvage against the same property, and the suits are heard at the same time, the Court will allow the counsel for one set of salvors to cross-examine the witnesses of the other (*i*).

Sale by Receiver.

If the vessel proceeded against for salvage be under arrest or detained by the Receiver of Wreck, the salvor's claim may be enforced by a sale of the property under the authority of the Receiver, or the decree of the Court of Admiralty.

Where the vessel is detained by the Receiver for non-payment of the sum due to the salvors, and the parties liable to pay are aware of the detention, then—

(1.) If the amount be undisputed and payment not made within twenty days after it has become due ; or,

(2.) If the amount be disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof be not made within twenty days after the decision of such first tribunal ; or,

(3.) If, in the latter case, an appeal lies from the decision of the first tribunal, and payment is not made, or appeal proceedings instituted, within such

twenty days, the Receiver may forthwith sell the CHAP. IX. property, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same (*h*).

If, however, the property detained be under the value of £5, or of so perishable a nature, or so much damaged, that it cannot, in the Receiver's opinion, be advantageously kept, or if the value is not sufficient to defray the expense of warehousing, he may sell it without waiting for the expiration of the twenty days, retaining the proceeds for the same purposes and subject to the same claims as the property itself (*i*).

When the Court of Admiralty decrees a sale, Sale by Court. which it has the undoubted power to do, in salvage and other cases, if the demand of the successful suitor be not satisfied (*k*), it directs a commission of sale to issue directed to the Marshal of the Court, who, as soon as the sale is effected, pays the gross proceeds into the Registry (*l*).

As soon as the monies are paid in an application may be made at Chambers for payment of the amount decreed due to the plaintiff. On the order

(*h*) 17 & 18 Vict. c. 104, s. 469.

(*i*) 17 & 18 Vict. c. 104, s. 453. By the New Code it is proposed to remove the above restrictions of the 389th section, and to empower the Receiver to sell, if, in his opinion, it is for the interest of all parties that he should do so, and to sell for payment of salvage after the expiration of twenty days' notice to the owner of the wreck.

(*k*) *The Tremont*, 1 W. Rob. 163.

(*l*) See Ad. Rules, 124, 125, and 126.

CHAP. IX. being made it is filed in the Registry, accompanied, if the party is unable to attend, by a power of attorney appointing some person to receive the amount. When the amount is under £50 or £60 the Court may order it to be paid to the solicitor without any power of attorney. A cheque is handed to the person receiving the payment, and a receipt for the amount is signed in the presence of the Registrar, and, as a general rule, attested by the solicitor of the payee (*m*).

*Enforcing judgment against bail.* If the property has been released on bail the judgment is enforced by monition. On application by the plaintiff the Court will order the defendant and his sureties to pay the money by a day named, and in default a monition may be applied for forthwith. The monition commands the defendant and his sureties to pay the amount within a certain time after service. It is to be personally served, and if disobeyed an attachment is issued.

If there has been no arrest or bail put in, payment is enforced against the defendant by monition in the same way.

#### THE JURISDICTION AND PRACTICE OF THE COUNTY COURT.

County Courts having Admiralty jurisdiction may entertain salvage suits where the value of the property saved does not exceed £1000, or where the amount claimed does not exceed £300, and in cases where the value or claim exceeds these amounts,

(*m*) See Williams & Bruce, Practice, p. 225. See also Ad. Rules, 127, 128, 129, 130.

and the parties by memorandum agree that the CHAP. IX.  
Court shall have jurisdiction (*n*).

*Commencement of Suit (o).*

With respect to the Court in which the suit is to be brought, it is provided by the 21st section of the County Courts Admiralty Jurisdiction Act (*p*), that proceedings in an Admiralty cause shall be commenced—

- (1.) In the County Court, having Admiralty jurisdiction, within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings:
- (2.) If the foregoing rule be not applicable, then in the County Court having Admiralty jurisdiction in the district of which the owner of the vessel or property to which the cause relates, or his agent in *England*, resides; or if such owner or agent does not reside within any such district, then in the County Court, having Admiralty jurisdiction, the district whereof is nearest to the place where such owner or agent resides:
- (3.) If, for any reason, the last foregoing rule is

(*n*) 31 & 32 Vict. c. 71, s. 3. The Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63, s. 49), conferred upon every County Court Judge the same jurisdiction in salvage cases as it gave to two Justices. By the Admiralty C. C. Act (31 & 32 Vict. c. 71, s. 5), however, it is provided that no County Court except those appointed by Order in Council, shall have jurisdiction in Admiralty causes.

(*o*) By the 77th general rule it is provided that the rules, orders, practice, and forms in actions in the County Courts shall, subject to the orders as to Admiralty causes, be adopted with reference to Admiralty suits so far as they are respectively applicable.

(*p*) 31 & 32 Vict. c. 71.

not applicable, or cannot be acted on, then in such County Court, having Admiralty jurisdiction, as General Orders direct:

(4.) In any case in the County Court, or one of the County Courts, having Admiralty jurisdiction, which the parties by a memorandum, signed by them or by their attorneys or agents, agree, shall have jurisdiction in the cause (*q*).

*Præcipe to Institute.*

The suit is commenced by the attorney of the plaintiff filing in the Registrar's office a *præcipe*, and, thereupon, an entry of the institution of the suit is made in a book kept by the Registrar, called "The Admiralty Suits Book" (*r*).

The *præcipe* states the nature of the suit, the name, address, and description of the party in whose behalf it is instituted, the name of the attorney, and an address within three miles of the Court-house, where all instruments and documents in the suit required to be served upon him are to be left. It also states the name of the owner, or owners, or other person, against whom the suit is instituted, if known, and if not known, then that the suit is instituted against the owner, or owners, unknown, of the vessel or other property to which the suit relates (*s*). Any number of salvors may join as plaintiffs (*t*).

(*q*) For lists of County Courts having Admiralty jurisdiction, see Appendix, *post*.

(*r*) General Orders, No. 4. See form of *præcipe*, 6, *post*.

(*s*) General Orders, No. 5.

(*t*) General Orders, No. 6.

*Summons.*

CHAP. IX.

Upon the filing of the præcipe the Registrar issues a summons for service, which may, at the option of the plaintiff's attorney, be served either by him, or by the Bailiff of the Court (*u*).

Where the vessel, or property, to which the suit relates is within the district, the summons may be served by delivering it to the person who is, at the time of service, apparently in charge of the vessel, or property; or, if there is no person in charge, by affixing it on some conspicuous part thereof; and in other cases the summons must be served personally upon the defendant, unless the Judge, or in his absence, the Registrar, should, upon facts duly verified upon affidavit, allow of substituted service (*v*).

*Appearance.*

An appearance is entered by the attorney for the defendant filing a præcipe, and thereupon an entry of his appearance is made in the Admiralty Suits Book.

The præcipe states the name, address, and description of the party on whose behalf the appearance is entered, the name of the attorney, and an address within three miles of the Court-house, at which all instruments and documents in the suit required to be served upon him may be left (*x*).

In the case of an arrest of any vessel, or property, Appearance  
on arrest.

(*u*) General Orders, No. 8.

(*v*) General Orders, No. 9.

(*x*) General Orders, Nos. 10 and 11. For form of præcipe for appearance, see *post*.

CHAP. IX. an appearance may be entered, the same as upon the service of the summons (*y*).

*Tender and Payment into Court.*

Notice to  
opponent's  
attorney.

Where the defendant desires to pay money into Court, his attorney gives a notice to the adverse attorney of the terms and amount of the tender, and pays the amount into Court, and within forty-eight hours from the payment, the adverse attorney files a notice stating whether he accepts or rejects the tender; should he fail to do so he is to be deemed to have rejected it (*z*).

Notice of  
acceptance  
of tender.

*Payment out of Court.*

Power of  
attorney  
unnecessary  
without  
order.

Money ordered to be paid out of Court may be paid to the attorney of the party without the production of a power of attorney from the party entitled to receive the money, unless the judge should otherwise order (*a*).

*Arrest of Vessel.*

With respect to the arrest of a vessel, or property, the subject of proceedings in the County Court, it is provided by the 22nd section of the County Courts Admiralty Jurisdiction Act,—

On affidavit  
that vessel  
about to be  
removed.

That “if evidence be given to the satisfaction of the judge, or, in his absence, the Registrar of the Court, that it is probable that the vessel, or property, to which the cause relates, will be removed out of the jurisdiction of the Court before the plaintiff’s

(*y*) General Orders, No. 13.

(*z*) General Orders, Nos. 50 and 51. See form of præcipe on payment into Court.

(*a*) General Orders, No. 52.

claim is satisfied, it shall be lawful for the said judge, or, in his absence, for the Registrar, to issue a warrant for the arrest and detention of the said vessel, or property, unless or until bail to the amount of the claim made in such cause, and to the reasonable costs of the plaintiff in such cause, be entered into and perfected, according to General Orders, by or on behalf of the owner of the vessel, or property, or his agent, or other the defendant in such cause; and, except as in this section expressly provided, there shall be no arrest or detention of a vessel, or property, in an Admiralty cause in a County Court otherwise than in execution" (b).

Where, after the institution of a suit, it is desired to arrest any vessel, or property, the attorney applying must file an affidavit, stating the facts which render it probable that it will be removed out of the jurisdiction of the Court (c). Affidavit of grounds.

#### *Warrant of Arrest.*

On the filing of such affidavit, the Registrar, in the absence of the judge, may require further evidence to be adduced, or, if satisfied with the evidence, he may issue a warrant for the arrest and detention of the vessel or property, which may be executed on Sunday, Good Friday, or Christmas Day, as well as on any other day (d).

#### *Release of Arrested Property.*

The security, upon the giving of which the release of the arrested vessel, or property, is ordered (e),

(b) 31 & 32 Vict. c. 71, s. 22.

(c) General Orders, No. 15.

(d) General Orders, Nos. 17 and 18.

(e) General Orders, No. 19. As to the mode of giving security

CHAP. IX. may be given either by bond or deposit of money, as in any ordinary action in a County Court (*f*).

Upon the amount sued for being paid into Court, or the security completed, the Registrar delivers to the attorney an order directed to the High Bailiff of the Court, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the property, to release it forthwith (*g*).

*Appraise-  
ment to be  
made before  
release in  
suit for sal-  
vage.* But in salvage cases the property is not to be released until its value has been ascertained, either by affidavit, by agreement, or by appraisement, save by consent of the plaintiff, or his attorney (*h*).

The Registrar may, on the application of either attorney, and whether before or after judgment, order any property under arrest to be appraised (*i*).

#### *Transfer of Causes.*

*Transfer by  
Admiralty  
Court on  
motion by  
either  
party.*

*Transfer*

With respect to the transfer of causes from the County Court to the High Court of Admiralty, it is provided by the County Courts Admiralty Jurisdiction Act, that the High Court of Admiralty, on the motion of any party to an Admiralty cause pending in a County Court may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the Court may seem fit (*j*) ; and it is also provided, that .

in ordinary County Court actions, see Shortt & Jones' County Courts Act and Orders, pp. 133, 167, and 193.

(*f*) See forms of Notice of Sureties, Affidavit of Justification, and Bail Bond, *post.*

(*g*) General Orders, No. 20.

(*h*) General Orders, No. 21.

(*i*) General Orders, No. 54.

(*j*) 31 & 32 Vict. c. 71, s. 6.

if, during the progress of an Admiralty cause in a County Court, it appears to the Court that the subject-matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the Court, the validity of any order or decree, theretofore made by the Court, shall not be thereby affected ; but (unless the parties agree by a memorandum signed by them, or by their attorneys or agents, that the Court shall retain jurisdiction) the Court shall by order transfer the cause to the High Court of Admiralty, but that Court may, nevertheless, if the judge of that Court in any case thinks fit, order that the cause shall be prosecuted in the County Court in which it was commenced, and it shall be prosecuted accordingly (*k*).

It is also provided that if, during the progress of an Admiralty cause, it should appear to the Court that the cause could be more conveniently prosecuted in some other County Court, or in the High Court of Admiralty, the Court may by order transfer it to such other County Court, or to the High Court of Admiralty (*l*).

Any person claiming to have an interest in the vessel or property, whether cognizable by the Court or not, may intervene for the purpose of having the cause transferred to the High Court of Admiralty (*m*).

Upon an order being made for the transfer of a cause, either to the High Court of Admiralty or to any County Court, the Registrar of the Court in which the cause was commenced, upon being served

CHAP. IX.  
where sum  
in dispute  
exceeds  
County  
Court juris-  
diction.

(*k*) 31 & 32 Vict. c. 71, s. 7.

(*l*) 31 & 32 Vict. c. 71, s. 8.

(*m*) General Orders, No. 12.

Transfer to  
another  
County  
Court or  
Court of  
Admiralty.

Transfer at  
instance of  
party inter-  
vening.

Proceedings  
forwarded.

**CHAP. IX.** with the order of transfer, sends the proceedings by post to the Registrar of the Court to which the cause has been transferred (*n*).

### *Evidence.*

County  
Court Re-  
gistrar em-  
powered to  
administer  
oaths.

County  
Court Re-  
gistrar to  
have powers  
of ex-  
aminer.

Evidence  
taken in  
one County  
Court to be  
received in  
another  
County  
Court.

Subpoena to  
witnesses  
and allow-  
ance.

The County Court Registrar is empowered to administer oaths in Admiralty causes in the County Court, and any person taking a false oath before him is to be deemed guilty of perjury (*o*).

The County Court Registrar, for the purpose of the examination of any witnesses within the district of that Court, is also invested with all the powers and authorities of an Examiner of the High Court of Admiralty, and evidence taken before him in that capacity is admissible as evidence in the High Court of Admiralty. It is also provided that evidence taken in any Admiralty cause before the Registrar of a County Court, or the Judge of a County Court, as General Orders shall direct, shall be received as evidence in any other County Court, but in each case saving all just exceptions (*p*).

On the application of either attorney, the Registrar issues summonses for witnesses to be served by the attorney, or if so required, by the bailiff of the Court (*q*).

The allowance to be made to witnesses for attendance, either before the Court or Registrar, is in no case to exceed the highest rate of the allowances mentioned in the scale, unless the Court shall by

(*n*) General Orders, Nos. 34 and 35.

(*o*) 31 & 32 Vict. c. 71, s. 19.

(*p*) 31 & 32 Vict. c. 71, s. 20.

(*q*) General Orders, No. 22.

special order otherwise direct. But seamen necessarily detained on shore for the purpose of the suit, are to be allowed such remuneration as the Court may think reasonable compensation for their loss of time (q).

At the request of either attorney, and at his cost in the first instance, or by order of the judge, at the cost in the first instance of the plaintiff, the evidence of witnesses examined in Court may be taken down by a shorthand writer or reporter appointed by the Court, and sworn in each case faithfully to report the evidence; and a transcript of the writer's or reporter's notes, certified by him to be correct, is to be admitted to prove the evidence of the witnesses (r).

### *Regulations as to Affidavits.*

Every affidavit is to be divided into short paragraphs, numbered consecutively, and be in the first person.

It should state the deponent's age, name, address, and description, and what facts or circumstances deposed to are within his knowledge.

The names of all the persons making any affidavit,

CHAP. IX.

Extent of  
remunera-  
tion to  
seamen.Shorthand  
notes.To be in  
first person,  
and divided  
into para-  
graphs.Deponent's  
age, de-  
scription,  
&c.

Jurat.

(q) General Orders, Nos. 22, 23, and 24. The following is the scale of allowances to witnesses :—

Gentlemen, merchants, bankers, and professional men,	per diem, 10s. to £1 0 0
--	--------------------------

Tradesmen, auctioneers, accountants, clerks, and yeomen	per diem, 5s. , 0 10 0
--	------------------------

Artisans and journeymen,	3s. , 0 5 0
--------------------------	-------------

Labourers and the like,	2s. , 0 3 0
-------------------------	-------------

Females, according to station in life,	2s. , 0 10 0
---	--------------

Travelling expenses sum reasonably paid, but not more than 6d. per mile one way.

If the witnesses attend in more than one suit, they will be entitled to a proportionate part in each suit only.

(r) General Orders, No. 32.

## CHAP. IX.

and the dates when, and the places where, it is sworn, are to be inserted in the jurat.

Conse-  
quences of  
affidavit  
not comply-  
ing with  
above rules.

Erasures or  
illegibility.

Affidavits not in conformity with the preceding regulations may be rejected by the Court, or the costs of them may be disallowed on taxation.

An affidavit in which there is any knife erasure, or which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in which there is any interlineation not duly authenticated by the person before whom it was sworn, may be rejected by the Court, or the Court may direct that the costs of it should be disallowed on taxation.

When de-  
ponent  
blind or  
illiterate.

Where an affidavit is made by any person who is blind, or who from his signature or otherwise appears to be illiterate, the person before whom the affidavit is sworn, is to state in the jurat that the affidavit was read over to the deponent, and that the deponent appeared to understand it, and made his mark or wrote his signature in the presence of the person before whom it is sworn.

Where  
sworn  
before party  
or attorney,  
&c.

The reception of any affidavit as evidence may be objected to, if the affidavit has been sworn before the party on whose behalf it is offered, or before his attorney or agent, or before a partner or clerk of such attorney (s).

*Hearing.*

No plead-  
ings.

There are no pleadings in Admiralty causes in the County Courts, and the only case in which notice of defence is necessary, is in a suit for damage by collision.

Place of  
hearing.

The cause is heard at the place where the Court

usually sits, but, by special permission of the judge, CHAP. IX. it may be heard, or part heard, at any place within the district of the Court (*t*).

Where application is made to the judge for the <sup>Time of</sup> hearing, or part hearing, of a suit at a place in which a County Court does not sit, the attorney files a præcipe, undertaking to provide at his expense a place, to the satisfaction of the judge, in which the suit may be heard (*u*).

It is provided by the 13th section of the County Courts Admiralty Jurisdiction Act, that the Judge of every County Court having Admiralty jurisdiction, shall hear and determine Admiralty causes at the usual Courts held within his jurisdiction, or at special Courts to be held by him, and which he is thereby required to hold as soon as may be after he shall have had notice of an Admiralty cause having arisen within the jurisdiction of his Court (*x*).

The General Orders provide that Admiralty causes are to be heard on the days appointed for the transaction of the ordinary general business of the County Court, or on such other days as the judge may from time to time appoint for the hearing of a suit, where, from the detention of a vessel or otherwise, a prompt determination of the suit is desirable (*y*).

The Registrar, upon application, gives to each attorney in the suit, where an appearance has been entered, and where no appearance has been entered, then to the plaintiff or his attorney, a notice under <sup>Notice of</sup> <sup>hearing.</sup>

(*t*) General Orders, No. 1.

(*u*) General Orders, No. 2. See form of præcipe, *post.*

(*x*) 31 & 32 Vict. c. 71, s. 13.

(*y*) General Orders, No. 3.

## CHAP. IX.

the seal of the Court, stating the day upon which the suit has been directed by the Judge to be heard (z).

Causes to  
be heard  
with the  
assistance of  
nautical  
assessors.

In causes of salvage, and certain other causes, the County Court judge may, at his own discretion, or at the request of either party to the cause, be assisted by two nautical assessors (whom he is empowered to summon to attend and assist), in the same way as the judge of the High Court of Admiralty is assisted (a).

Appoint-  
ment of  
assessors.

The Registrar of each County Court having Admiralty jurisdiction, is required from time to time to frame a list of persons of nautical skill and experience, residing or having places of business within the district of the County Court, to act as assessors in that Court. This list the County Court judge is to lay before the judge of the High Court of Admiralty, without whose approval it has no validity, and it is then to be published in *The London Gazette* (b).

Every assessor named in the list holds his office until a new list shall have been framed and approved, or until he resign his appointment (c). For wilful non-attendance, he is liable to a penalty not exceeding £5.

Mode of  
summoning  
assessors.

Deposit of  
fees.

When the attorney for any of the parties requires the judge to be assisted by two nautical assessors, he pays to the Registrar, at the time of filing the *præcipe*, the sum of two guineas, if the amount claimed does not exceed £100, and four guineas if it exceeds that amount, and these payments are considered as costs in the suit, unless otherwise ordered by the judge (d).

(z) General Orders, No. 14.

(a) 31 & 32 Vict. c. 71, ss. 10 and 11.

(b) 31 & 32 Vict. c. 71, s. 14.

(c) 31 & 32 Vict. c. 71, ss. 15, 16.

(d) General Orders, No. 69.

Where the judge requires the assistance of two nautical assessors, the fees must be paid by the plaintiff, or his attorney, before the hearing, and are costs in the suit, unless otherwise ordered by the judge (e).

Upon the filing of the praecipe, or upon the order of the judge, the Registrar selects from the list of assessors the names of two persons whom he may, having reference to the nature of the suit to be heard, consider can most effectually assist the judge in hearing and determining it, and sends to each, by post, a summons, requiring his attendance (f); and he pays to each assessor, for each day's attendance, one guinea, or two guineas, according as the amount claimed in the suit does, or does not, exceed £100 (g). Summons to assessor. Payment of assessors' fees.

When a suit is adjourned, the plaintiff must pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made by the Court (h).

#### *Enforcement of Decrees.*

With reference to the enforcement of decrees, it has been provided that "the decree of the County Court in an Admiralty cause shall be enforced against the person or persons summoned as the defendant or defendants, in the same manner as the decrees of the said Court are enforced in ordinary civil cases, save and except, or in this Act otherwise provided" (i).

(e) General Orders, No. 70.

(f) General Orders, No. 72.

(g) General Orders, No. 73.

(h) General Orders, No. 71.

(i) 31 & 32 Vict. c. 71, s. 12. Every final decree or order is within seven days from its date to be sent for registration to the Registrar of County Courts judgments.

## CHAP. IX.

Warrant  
against  
goods.

To obtain the committal or warrant of execution against the goods of a party who has neglected to obey the order of the Court for payment of a sum of money, a præcipe for a summons for commitment, or for a warrant of execution against the goods, has to be filed, and thereupon the summons or warrant is issued (*k*).

If defendant  
unknown,  
vessel to be  
arrested.

Where a decree has been obtained against an unknown defendant, the vessel or property to which the suit relates, is not to be taken in execution, but it may be arrested and detained under the provisions of s. 22 (31 & 32 Vict. c. 71) or kept under arrest, if already arrested (*l*).

Sale by  
County  
Court.

Where a vessel is seized under a County Court warrant of execution, the High Bailiff, before selling, has an inventory made by an appraiser, and the vessel is not to be sold under the appraised value unless by order of the Court. On the completion of the sale the High Bailiff pays the proceeds into Court, returning the warrant with his account of the sale and the certificate of appraisement; and, on the completion of the purchase, he delivers the property to the purchaser, and if required, executes a bill of sale to him (*m*).

Where un-  
known de-  
fendant  
disclosed.

If the name of an unknown defendant should be ascertained subsequent to the decree, then the defendant is to be served with notice, that unless he, within four days, files a præcipe applying for a rehearing of the suit, the vessel or property will be

(*k*) General Orders, No. 39. For forms of præcipe and note, *post.*

(*l*) General Orders, No. 40.

(*m*) General Orders, 43, 44, and 45.

sold in execution (*n*). This notice must be served personally on the defendant, unless the judge, or the Registrar, should, on affidavit, allow substituted service to be made (*o*).

If a vessel or property is about to be sold under the process of a County Court, and the owner desires that the sale should be conducted in the High Court of Admiralty, he may, on giving security for £10 to the County Court Registrar at any time after judgment, file with the Registrar an application for the transfer of the proceedings for sale. This application the Registrar forwards to the judge if the Court be not then sitting, accompanied by a certificate that the security for costs has been given, and the judge thereupon makes an order for the transfer of the proceedings for sale, with or without, as he may think fit, the transfer of the subsequent proceedings in the cause to the High Court of Admiralty (*p*).

When the vessel has been seized or arrested, it is retained by the High Bailiff until the Marshal of the High Court of Admiralty takes possession of it (*q*).

Where there is an appeal to the High Court of Admiralty, the judge of that Court may, if it appears to him expedient, order any sale decreed to be made of the vessel or property to be conducted in the High Court, and that the proceedings for sale, with or without the subsequent proceedings in the cause, should be transferred from the County Court (*r*).

Where more than one suit has been instituted Proceeds of

(*n*) General Orders, 40, 41.

(*o*) Ibid. 42.

(*p*) 31 & 32 Vict. c. 71, s. 23. General Orders, 47, 48.

(*q*) General Orders, 46.

(*r*) 31 & 32 Vict. c. 71, s. 32.

CHAP. IX. against a vessel, or property, and the same has been sold to be retained in Court where several suits against same vessel. unless the judge should otherwise order (*s*).

#### *Orders by Consent.*

Consents. Any consent in writing between the attorneys in a suit may, by permission of the Registrar, be filed, and thereupon become an order of Court and of the same validity as if made by the Court (*t*).

#### *Inspection of Documents.*

Inspection. During the progress of a suit, only the parties and their attorneys are at liberty to inspect the proceedings, and they may do so whilst the suit is pending, and for a year afterwards, free of charge, and take office copies (*u*). After the conclusion of a cause, any one may inspect and take copies of the proceedings on payment of the proper fee (*v*).

#### *Taxation of Costs.*

Taxation. There are two scales of costs in the County Courts in Admiralty causes. One where the sum recovered is above £100, and the other where it does not exceed that amount.

Costs between party and party and between attorney and client are taxed by the Registrar.

Where plaintiff recovers less than the sum claimed, the scale upon which the costs are to be taxed is to be in the discretion of the Court (*x*).

(*s*) General Orders, No. 53.

(*t*) Ibid. No. 38.

(*u*) Ibid. 55, 56, and 58.

(*v*) Ibid. 57, 58.

(*x*) General Orders, No. 76.

When a bill of costs has been filed for taxation, CHAP. IX. notice is, as soon as conveniently may be, to be sent to the respective attorneys appointing a time for the taxation, and at the time appointed, if either attorney is present, the taxation is to be proceeded with.

After the expiration of a week from the taxation of the bill, if there is no objection to it, the attorney may apply for payment if the amount is to be paid out of moneys in Court (*y*). Payment of costs after a week out of moneys in Court.

If, in a taxation between attorney and client, more than one-sixth of the bill is struck off, the attorney has to pay all the costs attending the taxation (*z*). Taxation between attorney and client.

If either attorney is dissatisfied with the taxation, he may, within a week thereof, give notice to the adverse attorney that he will apply to the judge to review the same, and file a praecipe objecting to the taxation (*a*). Review of taxation.

#### JURISDICTION OF JUSTICES.

By the Merchant Shipping Act, 1854, it is provided, that where the salvage claimed does not exceed £200, any dispute between the owners Claim under 200*L*. of any ship, boat, cargo, apparel, or wreck (*b*), and the salvor as to the amount of such salvage, should be referred to any two justices of the peace resident, in the case of wreck, at or near the place where the wreck is found; or, in case of salvage services, at or near the place where the ship or boat

(*y*) General Orders, 62, 63, 64, and 65.

(*z*) Ibid. No. 66.

(*a*) General Orders, No. 67.

(*b*) The word owners in the section has been held to include mortgagees, and any persons interested in the property at the time. *The Louisa*, B. & L. 59, S. C. 11 W. R. 614.

**CHAP. IX.** is lying, or at or near the first port or place in the United Kingdom into which the ship or boat is brought after the occurrence of the accident, by reason whereof the claim to salvage arises (*c*).

Claim above  
200*l.* by con-  
sent of  
parties.

Where value  
under 1000*l.*

Cinque  
Ports.

Extent of  
jurisdiction  
of justices.  
Services on  
high seas.

The same section empowers the justices to determine disputes as to salvage claims above £200 where the parties consent to refer them to their arbitration (*d*) ; and by a subsequent statute (*e*) the jurisdiction was further extended to cases where the value of the property saved did not exceed £1000.

The justices have no jurisdiction over salvage disputes arising within the boundaries of the Cinque Ports, the statute expressly providing that these disputes are to be determined in the manner they had been before the passing of the Act (*f*).

The jurisdiction of the Justices under the Act of 1864 was held to be confined to cases where the salvage services had been rendered within the limits of the United Kingdom, that is to say, within three miles of the shore (*g*), that of the High Court of Admiralty remaining undisturbed where the services, however small the amount, were performed on the high seas beyond this limit (*h*) ; and the onus of proving that the services were rendered within the three miles, was held to lie upon those who disputed the jurisdiction of the Court (*i*). This, however, was

(*c*) 17 & 18 Vict. c. 104, s. 460.

(*d*) *Ibid.*

(*e*) 25 & 26 Vict. c. 63, s. 49.

(*f*) 17 & 18 Vict. c. 104, s. 460.

(*g*) *The Leda*, 1 Swa. 40.

(*h*) *Ibid.* p. 44.

(*i*) *The Argo*, Swa. 112. See also *The Actif*, *Ibid.* 237 ; *The Gertrude*, 30 L. J. Ad. 130.

remedied by a later Act (*k*), which declares the provisions of the former statute "to apply whether the salvage service has been rendered within the limits of the United Kingdom or not."

The dispute as to salvage may be heard and adjudicated upon by the justices, on the application either of the salvor, or of the owner of the property salved, or of their respective agents. The justices may themselves determine it; but they are empowered to call to their assistance any person conversant with maritime affairs as assessor; or, if a difference of opinion arises between them, and even without such difference, if they think fit to appoint a person similarly qualified as umpire (*l*) to decide the point in dispute. The justices are to make their award within forty-eight hours after the matter has been referred to them, and the umpire his award within forty-eight hours from his appointment, but

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(*k*) 25 & 26 Vict. c. 63, s. 49. By the 409th section of the new Merchant Shipping Code it is proposed, that where the salvage claim is under £20, or the property under £50, the claim is to be determined by the Receiver of Wreck of the district, whose award shall be final.

If the claim be under £300, or the value of the property under £1000, then it is to be determined by the local Admiralty Court of the district. In cases exceeding these limits, the parties are to be at liberty to confer jurisdiction on the Receiver or on the local Admiralty Court by consent; otherwise the dispute is to be determined by the superior Court of Admiralty.

A party improperly proceeding in a superior Court, is to be deprived of his costs unless the judge certify, and may be ordered to pay the costs of the other party.

The amount claimed is to mean the amount claimed in the proceedings, and the value, the value of the property when first brought into safety by the salvors.

(*l*) Each assessor and umpire is to receive for his services such sum not exceeding £5 as the Board of Trade may direct. 17 & 18 Vict. c. 104, s. 462.

CHAP. IX. both the justices and umpire may, by memorandum in writing, extend these periods (*m*).

Evidence :  
costs.

The justices or umpire may also call for the production of any documents in the possession of either party which they may think necessary, and examine witnesses on oath (*n*). The costs of the arbitration are in their discretion (*o*).

Jurisdiction  
of High  
Court of  
Admiralty  
in cases that  
may be  
heard by  
justices.

Before the passing of the County Court Admiralty Jurisdiction Act (*p*), it was laid down that in cases where the sum claimed for salvage was under £200, or the property saved, in value, under £1000, the High Court of Admiralty (where the salvage had not been effected within the boundary of the Cinque Ports) had no jurisdiction (*q*) ; and even although a defendant in a suit brought under such circumstances entered an absolute appearance, instead of one under protest, the Court considered itself bound to notice the statute, and to refuse to entertain the suit, although it might not when an appearance was entered in such a form condemn the plaintiff in costs (*r*). Nor would the fact that there had been delay in taking the objection affect the question. If at any time the Court discovered it had no jurisdiction, it would proceed no further (*s*).

How value  
to be taken.

The onus of showing the value of the property to be under £1000 rested upon those who disputed the jurisdiction of the Court; and in determining the question of jurisdiction, the Court would hold the

(*m*) 17 & 18 Vict. c. 104, s. 461.

(*n*) *Ibid.* s. 463.

(*o*) *Ibid.* s. 462.

(*p*) 31 & 32 Vict. c. 71.

(*q*) *The William and John*, B. & L. 49 : 32 L. J. Ad. 102.

(*r*) *The Louisa*, Br. & L. 59, and 11 W. R. 614.

• (*s*) Per Dr. Lushington, *The Mary Anne*, B. & L. 334.

value of the property to mean its value when first brought into port by the salvors, and not at any subsequent period. Thus, where, in consequence of the mismanagement of persons who took possession of the ship and cargo as the ship's agents, large and unnecessary expenses were incurred, the freight diminished, and the value of the ship and cargo reduced, so that the whole amounted to under £320, the Court refused with costs a motion of the owners to dismiss the suit of the salvors, on the ground that the value of the property was under £1000 (*t*).

The 6th section of the County Courts Admiralty Jurisdiction Act has, however, made a considerable difference in the jurisdiction of the Admiralty Court with respect to suits where the value is under £1000, or the claim under £200. The Court now has jurisdiction to entertain such claims, and it is entirely a matter for its discretion whether it will exercise the jurisdiction or not (*u*). Changes  
effected by  
31 & 32 Vict.  
c. 71.

"There is," observes Sir Robert Phillimore (*v*), "an entire change in the law since the decisions to which I have been referred (*The William and John* and *The Louisa*), and since the passing of the Merchant Shipping Acts, on the language of which these decisions were entirely founded; and it is no longer the case, as it was when those decisions were given, that the Court has no discretion to exercise as to

(*t*) *The Stella*, L. R. 1 Ad. 340.

(*u*) "The High Court of Admiralty of England, on motion by any party to an Admiralty cause pending in a County Court, may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the Court may seem meet." 31 & 32 Vict. c. 71, s. 6.

(*v*) *The Herman Wedel*, 39 L. J. Ad. 30-32.

CHAP. IX. whether it will entertain cases in which the value is under £1000. The Court has that discretion, and therefore, as I have already said, those cases, as it appears to me, become inapplicable altogether as affording any guide to the Court in the present state of the law."

Punishment  
of salvors  
for impro-  
perly bring-  
ing suit in  
Admiralty  
Court  
instead of  
before jus-  
tices.

The Court of Admiralty has jurisdiction to condemn in damages and costs plaintiffs who wrongfully arrest and detain a vessel in respect of a claim that might have been proceeded for before the justices.

The power of condemning a plaintiff in damages is one, however, which the Court will exercise only in extreme cases. It may give a defendant his costs, but it has refused to inflict the unsuccessful plaintiffs in damages where the circumstances of the case did not show on their part any *mala fides* or *crassa negligentia* (*x*).

Where, however, a set of salvors in respect of services, for which two justices, before whom the claim was subsequently brought, awarded them only £10, instituted a suit, claiming £800, and arrested the vessel which, with freight and cargo, only amounted in value to £823; the Court held them to be liable in damages, but under the circumstances of the case, and as the salvors, on learning the value of the vessel, &c., withdrew from the action, they were only condemned in £20 and costs (*y*).

If the salvage had been effected within the boundaries of the Cinque Ports, the High Court of Admiralty retained, and still retains (independently

(*x*) *The Kate*, B. & L. 218-221; S. C. 33 L. J. N. S. Ad. 122.

(*y*) *The Eleonore*, B. & L. 85, and 33 L. J. Ad. 19.

of the operation of 31 & 32 Vict. c. 71, s. 6), jurisdiction, even although the amount claimed be under £200, or the value of the property saved under £1000. The 460th section of the Merchant Shipping Act, 1854 (z), expressly reserves the jurisdiction of the Court of Admiralty of the Cinque Ports over salvage cases, and the concurrent jurisdiction of the High Court of Admiralty with that Court has been held to remain unaffected by either the Act of 1854 or the Act of 1862 (a).

Jurisdiction where salvage effected within boundary of Cinque Ports.

(z) 17 & 18 Vict. c. 104.

(a) *The Jeune Paul*, L. R. 1 Ad. 336. See also *The Maria Louisa*, Swa. 67 ; and see 1 & 2 Geo. 4, c. 76 ; 17 & 18 Vict. c. 104, s. 460. An appeal lies from an award of the Cinque Ports Commissioners to the High Court of Admiralty. The mode of appeal is by re-hearing. See *The Caledonia*, 17 W. R. 626.

## CHAPTER X.

## COSTS.

Costs in  
discretion  
of Court.

Generally  
follow  
result.

THE costs of a salvage cause are (except where the statutory provisions referred to in another place apply) in the discretion of the Court. Although they may not necessarily be given to the successful party (*a*), yet generally they follow the event, and where a claim for salvage fails, the plaintiffs may be, and on many occasions have been, ordered to pay them (*b*), and the more especially if the case set up by the salvors turn out to be a false or fraudulent one (*c*) ; salvors who have been guilty of misconduct may, as has been already pointed out, not only forfeit their claims for salvage, but be also condemned to pay the costs of the defendants. Thus,

(*a*) See *The North Star*, Lush. 45-51 ; *The William*, Ibid. 199-200 ; *The Johannes*, Ibid. 182 ; *The Ironsides*, Ibid. 458-467 ; *The Kepler*, Ibid. 201 ; *The Albatross*, 1 Spinks, 175, n. ; *The Trident*, Ibid. 224, n. (*a*) ; *The Catalina*, 2 Ibid. 23 ; *The Golubchick*, 1 W. Rob. 143 ; *The Diana*, 32 L. J. Ad. 57 ; *The Fortitude*, 2 W. Rob. 217-225 ; *The Lord Auckland*, Ibid. 301 ; *The Glasgow Packet*, Ibid. 306 ; *The Nicolina*, Ibid. 175 ; *The North American*, Swa. 466 ; *The St. Lawrence*, 7 Notes of Cases, 556 ; *The Laurel*, B. & L. 191 ; *The Apollo*, 1 Hagg. 306-319.

(*b*) *The Lady Egidia*, Lush. 513 ; *The Edward Hawkins*, Lush. 515 ; *The Nymphe*, 5 L. T. N. S. 365 ; *The Duke of Manchester*, 10 Jurist, 863 ; *The London*, Br. & L. 82.

(*c*) *The Giacomo*, 3 Hagg. 344 ; *The Susannah*, Ibid. 345, n.

where the Receiver of Wreck, on receiving a bond from the owners of a ship, released her, and the salvors forcibly resisted the owners in taking possession, the release of the vessel was ordered, and the salvors were condemned in costs (*d*) ; and in cases where the Court did not consider the misconduct of the salvors (as for instance where they obtruded their services after being discharged, or prevented further assistance from being given to the vessel) to be of so serious a nature as to occasion a forfeiture of all salvage remuneration, it has, nevertheless, punished them by awarding only two-thirds of their costs (*e*), or a fixed sum, *nomine expensarum*, instead of costs (*f*).

The indulgence which the Court of Admiralty has always shown to salvors, however, and the expediency of encouraging their exertions, which it has always recognised, has frequently induced it to act leniently towards them in awarding costs. In *The Princess Alice* (*g*), Dr Lushington observes : "It has been the policy of the maritime law of this country, from the earliest times, to countenance and favour this

CHAP. X.

Indulgence  
to salvors in  
questions of  
costs.

(*d*) *The Lady Catherine Barham*, 5 L. T. N. S. 693. See also *The Joseph Harvey*, 1 C. Rob. 306.

(*e*) *The Glory*, 14 Jurist, 676.

(*f*) *The Glasgow Packet*, 2 W. Rob. 306-314. See also *The Magdalen*, 5 L. T. N. S. 807-809. See *The Nautilus*, Swa. 105, where salvors, who after an award by consent before justices, commenced a suit in the Admiralty Court, and accepted a tender of the amount that the justices had awarded, were condemned in damages and costs ; and *The Gloria de Maria* (Swa. 106), where salvors, who after appealing from the award of Cinque Ports Commissioners, instituted a suit, and arrested the vessel, were also condemned in costs, damages, demurrage, and expenses. See also *The Belle of Lagos*, L. R. 2 Ad. 345 : 20 L. T. N. S. 1019 ; *The Margaret and Jane*, 38 L. J. Ad. 38.

(*g*) 3 W. Rob. 138-143. See also *The William*, 5 Notes of Cases, 108.

CHAP. X. meritorious class of persons, and nothing I conceive would be more contrary to that policy, or more likely to damp the energies of salvors in general, than the frightening them from a recourse to this Court by a rigid application of the principle of costs." The Court has, therefore, not only dismissed suits on many occasions without costs as against the plaintiffs (*h*), but it has, under special circumstances, even allowed the salvor whose claim it rejected, the costs of the proceedings as against the owner (*i*).

Costs where tender rejected.

If the defendants tender to the salvors, and pay into Court, a sum subsequently held to be sufficient, and the salvors notwithstanding proceed with their suit, they will be condemned in costs (*k*); and where after an offer of £80 was refused by the claimants, and a tender of £30 only was made, and the Court subsequently awarded £50, it, nevertheless, refused to give the salvors costs (*l*). If, however, there are unusual circumstances involved in the case, the Court is unwilling to apply the doctrine of costs after tender against salvors. Dr. Lushington in one case observes : "There is in the very nature of salvage services something so loose and indefinite, and so difficult to be determined by the best constituted minds when looking at their own case, that I

(*h*) *The Little Joe*, Lush. 88 ; *The Johannes*, 30 L. J. Ad. 91-95 ; *The Dygden*, 1 Notes of Cases, 115-118 ; *The Upnor*, 2 Hagg. 3 ; *The Zephyr*, Ibid. 43-48 ; *The Mulgrave*, Ibid. 77 ; *The Harriot*, 1 W. Rob. 439-447.

(*i*) *The Ranger*, 9 Jurist, 119-120 ; *The Frances and Eliza*, 2 Dods. 115-121 ; *The Vine*, 2 Hagg. 1-3.

(*k*) *The Cargo ex Honor*, L. R. 1 Ad. 87 ; *The Batavier*, 1 Spinks, 169 ; *The Paris*, Ibid. 289 ; *The Black Boy*, 3 Hagg. 386 (n.).

(*l*) *The Hedwig*, 1 Spinks, 19-24.

am not inclined to press the doctrine to its full CHAP. X.  
extent" (*m*).

The Court will not ordinarily, however, in such a case grant costs, as it would be holding out an inducement to salvors to reject adequate tenders (*n*).

If the formal tender by act of Court has been preceded by a tender out of Court of a sum equal to or greater than that subsequently formally tendered and accepted, the salvors may be refused their costs subsequent to the offer. In such a case, however, the Court will not only refuse to take cognisance of loose negotiations and offers, which end in nothing, but it requires, as a Court of Common Law would, that the sum offered should be tendered in money or in bank-notes (*o*).

The tender must either offer to pay the costs of the salvor, or state the grounds on which the payment is resisted (*p*).

See further on this subject, "Practice," *ante*.

(*m*) *The William*, 5 Notes of Cases, 108-110. See also *The Hopewell*, 2 Spinks, 249.

(*n*) *The Hopewell*, *ubi supra*; *The Sovereign*, 1 Lush. 85.

(*o*) Judgment of Dr. Lushington, *The Sovereign*, *ubi supra*.

(*p*) *The Hickman*, L. R. 3 Ad. 15.

## CHAPTER XI.

## APPEAL.

AN appeal lies from the decision of the Court of Admiralty to the Privy Council, and from the decision of the justices, or of a County Court judge, to the Court of Admiralty.

Appeal to  
Privy Coun-  
cil as to  
amount dis-  
couraged.

The Judicial Committee of the Privy Council are unwilling to interfere with the judgment of the Court appealed from, where the question is one of amount, which rested in the discretion of the judge of the Court below (*a*), and they will refuse to disturb the amount of compensation awarded by the Court below, unless the difference between that amount and the sum which, in their judgment, should have been given, is very considerable (*b*). Nor will they interfere with a salvage award on the ground that the judge of the Court of Admiralty has given too large a sum to the salvors, unless they are satisfied beyond all doubt that he has made an exorbitant estimate of their services (*c*). Where a party seeks by appeal to diminish or increase such an award, he undertakes a very difficult

(*a*) *The Clarisse*, Swa. 129-134; *The Scindia*, L. R. 1 P. C. 241-249.

(*b*) *The England*, 38 L. J. Ad. 9.

(*c*) *The Fusileer*, B. & L. 341-350.

task ; but, nevertheless, if an excess or exorbitance exists, the Judicial Committee will exercise their own judgment as to the proper remuneration to the salvors, and reduce it to a just and reasonable amount (*d*). Thus, where the Court of Admiralty awarded £3150 for salvage services, which the Judicial Committee considered would be sufficiently remunerated by £1500, they reduced the award to the latter amount (*e*). If, in the same way, the Privy Council should be of opinion that the sum awarded is insufficient, they will increase it to such an amount as they consider reasonable. Thus, in *The True Blue* (*f*), where a derelict vessel and cargo of the value of £1452, was saved by a steamer which, with her cargo, was of the value of £30,000, the Privy Council increased a salvage award of the Vice-Admiralty from £300 to £450.

The appeal must be asserted within fifteen days from the date of the order appealed from. This may be done by the solicitor of the party appealing giving personal notice to the Registrar of the Court of Admiralty when the decree is made, or by an instrument of appeal, which is subsequently drawn up before a notary, and attested by two witnesses. The appellant has then a period of a year and a day within which to prosecute his appeal (*g*).

Time for  
appealing to  
the Privy  
Council.

(*d*) Judgment of Lord Chelmsford, *The Chetah*, 38 L. J. Ad. 1.

(*e*) *The Chetah*, *ubi supra*. See also *The True Blue*, L. R. 1 P. C. 250. And see also *Prendeville v. The Steam Navigation Company*, 38 L. J. Ad. 9.

(*f*) *Ubi supra*.

(*g*) As to the practice in cases of appeal to the Privy Council, the reader is referred to the works of Messrs. Williams & Bruce, and Mr. Coote, upon the practice of the Court of Admiralty.

*Appeal from the County Court.*

An appeal lies to the High Court of Admiralty from a final decree or order of a County Court judge, and with the permission of the judge, from any interlocutory decree, on security for costs being given, and the regulations of the General Orders as to appeals complied with (*h*). No appeal, however, is to be allowed where the parties, before the decree or order is made, have agreed by memorandum that the decree or order shall be final (*i*) ; nor unless the amount decreed to be due exceeds £50 (*k*). This restriction does not, however, apply to an appeal by a plaintiff whose suit has been dismissed (*l*). There is no further appeal to the Privy Council, except by the express permission of the Judge of the High Court of Admiralty (*m*).

It is also provided that no appeal shall be allowed unless the instrument of appeal is lodged in the Registry of the High Court of Admiralty within ten days from the date of the decree or order appealed from. The judge of the High Court of Admiralty may, however, on sufficient cause being shown to his satisfaction for such omission, allow the appeal to be prosecuted, notwithstanding that the instrument of appeal has not been lodged within the ten days (*n*).

The costs of an unsuccessful appeal are to be borne

Costs of  
appeal.

(*h*) 31 & 32 Vict. c. 71, s. 26. There is no provision in the General Orders as to County Court appeals.

(*i*) 31 & 32 Vict. c. 71, s. 28.

(*k*) Ibid. s. 31.

(*l*) *The Doctor Van Tunen Tello* (not reported).

(*m*) 31 & 32 Vict. c. 71, s. 29.

(*n*) Ibid. s. 27.

by the appellant, unless the Appellate Court should CHAP. XI.  
otherwise order (*n*).

No appeal lies to the Privy Council from a decree <sup>Appeal to  
Privy  
Council.</sup> or order of the High Court of Admiralty on a County Court Appeal, except by express permission of the judge of the High Court of Admiralty (*o*).

Appeals may be made and causes transferred to the Court of Admiralty of the Cinque Ports in the same way and subject to the same regulations as to <sup>Appeal to  
Court of  
Admiralty  
of Cinque  
Ports.</sup> the High Court of Admiralty in cases which arise within the jurisdiction of these ports (*p*).

As to the sale of the vessel or property by the High Court of Admiralty in the case of an appeal, <sup>Sale of property by  
High Court  
in case of  
appeal.</sup> see *ante*, p. 193.

#### *Appeal from Justices.*

No appeal from the award of the justices is allowed unless the sum in dispute exceeds £50; nor unless the appellant within ten days after the date of the award, gives notice to the justees to whom the matter was referred, of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceedings as, according to the practice of the Court of Appeal, are necessary for the institution of an appeal within twenty days from the date of the award (*q*).

The words "sum in dispute" in this section have <sup>Meaning of  
"sum in  
dispute."</sup> been held to mean not the sum awarded by the justees, but that claimed by the salvors, and where the latter, in the proceedings before the magistrates,

(*n*) 31 & 32 Vict. c. 71, s. 30.

(*o*) Ibid. s. 29.

(*p*) Ibid. s. 33.

(*q*) 17 & 18 Vict. c. 104, s. 464.

CHAP. XI. "claimed a certain amount of salvage not exceeding £200," and appealed from the decision of the justices awarding them £24, the Court held that the salvors were entitled to appeal, and adjudged them an additional sum of £20 and costs (*r*). Where, however, the salvors sent in a formal demand for £40 to the owner, and afterwards claimed before the justices "a sum not exceeding £200," and the justices were of opinion that no salvage whatever was due, the Court of Admiralty held that it had no jurisdiction to entertain an appeal brought by the salvors from this order, and dismissed it with costs (*s*).

Unwillingness of Court to interfere with amount on appeal.

The Court of Admiralty is equally unwilling as the Privy Council to encourage salvage appeals where the question is merely one of amount, and in such cases the burden always lies on the appellant, especially where the decision appealed from is a decision of discretion (*t*). The Court, especially where the appeal is from a decision of persons acquainted with the locality, relies to some extent on the local skill of those who decide the question, but the judge by whom the appeal is heard, will nevertheless exercise his own judgment upon it, and if the sum awarded is entirely insufficient for the services rendered, he will act upon his own judgment, and decide accordingly (*u*). The Court has on

(*r*) *The Andrew Wilson*, Br. & Lush. 56.

(*s*) *The Mary Anne*, Ibid. 334. See also *The Generous*, 2 L. R. Ad. 57, where the Court entertained an appeal of the owners from the decisions of justices, the claim being £55—£5 for getting an anchor on board, and £50 for placing the vessel in safety.

(*t*) Judgment of Dr. Lushington, *The Cuba*, Lush. 14-15.

(*u*) Judgment of Dr. Lushington, *The Messenger*, Swa. 191. See *The Vesta*, 2 Hagg. 189.

many occasions increased the sum awarded by CHAP. XI. justices. Thus, where salvors brought a barge off a dangerous position near the Nore Sand, and claimed £80, and the magistrates at Maidstone awarded them £15 only, the Court of Admiralty, on appeal, held that this sum was totally inadequate for the services rendered, and that there had been a gross miscarriage of justice on the part of the magistrates, and awarded the salvors £40 with costs (*x*) ; and where the justices, in a case where it was alleged that the salvors had agreed to render the service for 8*s.* 6*d.*, dismissed the claim, the Court holding that real danger had been incurred by the salvors in rendering the service, set aside the agreement as futile, and gave the claimants £10 and costs (*y*). Unless the sum awarded be wholly inadequate, however, the Court will not disturb it, even although it considers the services such that, if the case had come before it originally, it might have given a larger amount (*z*).

Upon an appeal being made, it is the duty of the Proceedings  
to be for-  
warded. justices to transmit to the proper officer of the Court of Appeal a certified copy of the proceedings before them, and of their award, accompanied by a certificate of the gross value of the article respecting which salvage is claimed ; and it is provided "that such copy and certificate shall be admitted in the Court of Appeal as evidence in the cause" (*a*).

(*x*) *The Harriet*, Swa. 218.

(*y*) *The Phantom*, L. R. 1 Ad. 58.

(*z*) *The Jeune Louise*, 37 L. J. Ad. 32.

(*a*) 17 & 18 Vict. c. 104, s. 465.



## A P P E N D I X.

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1 & 2 GEORGE IV. CAP. 76.

AN ACT to continue and amend certain Acts for preventing the various Frauds and Depredations committed on Merchants, Shipowners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports ; and also for remedying certain defects relative to the adjustment of Salvage, under a Statute made in the Twelfth Year of the Reign of her late Majesty Queen Anne. [2nd July, 1821.]

Whereas by an Act passed in the forty-eighth year of his 4 Geo. 3, late Majesty king George the Third, intituled "An Act c. 130. for preventing Frauds and Depredations committed on Merchants, Ship Owners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports ; and also for remedying certain Defects relative to the Adjustment of Salvage, under a Statute made in the Twelfth year of her late Majesty Queen Anne ;" which Act was to continue in force for seven years, and from thence to the end of the next session of parliament : And whereas by an Act passed in the fifty-third year of his late Majesty king George the Third, the said above recited Act, except so far as the same was altered, was further continued in force for seven years from the passing of the said Act, and from thence to the end of the next session of parliament, and no longer : And whereas it is expedient that the said recited Acts should be further continued, except so far as the same are altered by this Act ; be it therefore enacted by the King's most Excellent Majesty, by and with the

## SECT. 2.

Lord Warden  
to appoint  
commiss-  
ioners to  
determine  
differences  
relative to  
salvage.

advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for the Lord Warden of the Cinque Ports for the time being to nominate and appoint, by any instrument or instruments under his hand and seal, three or more substantial persons in each of the Cinque Ports, two ancient towns, and their members, to adjust and determine any difference relative to salvage (which may arise) between the master of any vessel and the person or persons bringing such cables and anchors ashore; and in case any ship or vessel shall be either forced or cut from her cables and anchors by extremity of weather, or by any other accident whatever, and leave the same in any roadstead, or other place within the jurisdiction of the Cinque Ports, two ancient towns, and their members, and the salvage cannot be adjusted between the persons concerned, then the same shall be determined by any three or more of the said persons so to be appointed as aforesaid, within the space of twenty-four hours after such difference shall be referred to them for their determination thereof, any usage or custom to the contrary in anywise notwithstanding: Provided always that such Commissioners shall, immediately after their nomination, proceed to elect some fit and proper person, who shall be a notary or master extraordinary in Chancery, as their secretary or register, except to the port of Dover, where the register for the time being of the Court of Admiralty of the Cinque Ports shall be the register; and which secretary or register, shall enter in a book, to be kept for that purpose, all the proceedings of such Commissioners, and also a copy of the awards which they shall from time to time make; but such election of secretaries, or registers, shall be subject to the approbation of the Lord Warden for the time being.

Commissioners to appoint a secretary or register, subject to the approbation of the Lord Warden.  
Proceedings to be entered.

2. And be it further enacted, That it shall be lawful for the said Commissioners to be appointed as aforesaid, to decide on all claims and demands whatever, which shall or may be made by pilots, hovellers, boatmen, and other persons, for services of any sort or description rendered to any ship or vessel, as well for carrying off from the shore to such ship or vessel, any anchors, cables, or other stores from any part or port of the coast of Kent, Sussex, Essex, or the Isle of Thanet, within the jurisdiction aforesaid, as for the conducting and conveying such ships and vessels from the Downs, and other bays and roadsteads on the coast of Kent, Sussex, and Essex, and the island of Thanet, or from the sea or any other place, to Ramsgate, Dover, or any other harbour, port, or place, on the said coasts, within the jurisdiction aforesaid, or for the saving and preserving, within the jurisdiction aforesaid, any goods or

merchandise wrecked, stranded, or cast away from any ship or vessel, the master or owners thereof, or their agents, being present at the place where the Commissioners shall be sitting ; and that the said Commissioners shall have full power and authority to hear and determine on all cases whatever of services rendered by pilots, boatmen, and others, to shipping within the jurisdiction aforesaid, whether such ships or vessels shall be in distress or not ; and that it shall be lawful for the said Commissioners, whenever they see occasion, to examine the parties or their witnesses upon their oaths, which oaths shall and may be administered by the said secretary or register.

SECTS. 3, 4.

3. And be it further enacted, That it shall be lawful for the Commissioners so to be appointed, and their secretary or register as aforesaid, who shall decide on any such claims or demands as aforesaid, to demand and receive of and from the owners of such ships or vessels, or the proprietors of any such goods or merchandizes, against whom any pilot, boatman, or other person shall make any claim or demand for services of any sort rendered to such ships or vessels, or for the sole saving and preserving any goods or merchandises wrecked, stranded, or cast away within the jurisdiction aforesaid ; and such owners and proprietors are hereby required to pay to them such fee or reward for deciding on every such claim and demand, as shall be adjudged to them in that behalf by the Lord Warden of the Cinque Ports for the time being : Provided always, that no person to be appointed a commissioner by virtue of this Act shall have power or authority to act in any other port or place than that in which he is resident, or from which his usual place of residence is not distant more than one mile ; and that before such Commissioners shall in any case proceed to act, they shall severally take the following oath before a magistrate or a Commissioner of the Court of King's Bench or Common Pleas, or a Master Extraordinary in Chancery ; (*videlicet,*)

Commissioners to be paid by the owners, &c. for their trouble such fees as shall be allowed by the Lord Warden.

No commissioner shall act out of the place where he is resident.

Commissioners to take the following oath.

"I A. B. do swear, That I have not, neither will I in any way, directly or indirectly, take or receive any fee, emolument, or reward, from any of the parties whose interests are referred to my decision (save and except such fee or reward as shall be allowed by the Lord Warden to be paid to me by the ship owners or proprietors of the cargo, or their agents) ; and that I will not accept or receive any fee whatever from the persons claiming reward or salvage ; but that I will decide according to the best of my judgment, on the evidence to be brought before me, without favour or affection to either party. So help me God."

Form of oath.

4. And be it further enacted, That in case the party or parties dis-

## SECTS. 5—15.

satisfied may appeal to the High Court of Admiralty, or the Admiralty of the Cinque Ports; but the ship to be liberated, on giving bail in double the amount of the award.

Bail to be taken and certified according to schedule annexed.

The appeal to be conclusive.

The Lord Warden and his deputies, judge, &c., to have the like power as justices of the peace

parties so claiming to be entitled to salvage or compensation for services rendered as aforesaid, or the party or parties who are to pay the same, or their agents, shall be dissatisfied with such award and decision of the Commissioners, it shall and may be lawful for either of them respectively, within eight days after such award is made, but not afterwards, to declare to the Commissioners his or their desire of obtaining the judgment of some competent court of admiralty respecting the said salvage or compensation as aforesaid, and thereupon such party or parties shall forthwith be required by the Commissioners to declare whether he or they will proceed in the Court of Admiralty of the Cinque Ports, or the High Court of Admiralty of England, and he or they shall so proceed within twenty days from the date of such award, by taking out a monition against the adverse party; but in such case the said Commissioners are hereby empowered and required to permit the said ship and her cargo, notwithstanding such declaration and proceeding, to depart on her voyage, or to deliver to the owners and proprietors, or their agents, any goods or merchandises respecting which any claim for salvage shall be made upon the owners or proprietors of the same, or their agents, giving good and sufficient bail in double the amount of the sum awarded; and which bail the said Commissioners, or any of them, are and is hereby authorised to take and certify according to the form contained in the schedule hereunto annexed, and to transmit the same without delay to the Court of Admiralty, in which the intention of proceeding shall be so declared, together with a true certificate in writing of the gross value of the whole ship and cargo, or other goods and merchandises respecting which salvage shall be claimed, and also an official copy of such proceedings and awards, certified by the said secretary or register, and the same shall be admitted by such court of admiralty as evidence in the cause.

5. Provided always, and be it further enacted, That on an appeal so as aforesaid being made to the Court of Admiralty of the Cinque Ports, or to the High Court of Admiralty, the same shall be taken and held to be final, and no ulterior appeal from sentence of the Court of Admiralty of the Cinque Ports, or from the High Court of Admiralty, shall lie to the King in Chancery.

Ss. 6 to 14 repealed by 17 & 18 Vict. c. 120, schedule.

15. And be it further enacted, that the Lord Warden of the Cinque Ports for the time being, and the Lieutenant of Dover Castle for the time being, and the Deputy Wardens of the Cinque Ports for the time being, and the Judge Official and Commissary of the Court of Admiralty of the Cinque Ports, two ancient towns, and the members

thereof for the time being, and any other officer who shall be specially appointed by the Lord Warden, and all and every of them, shall and may execute, perform, and do, within the jurisdiction aforesaid, all the acts, matters, and things contained in this Act, in like manner, to all intents and purposes, as any magistrate or magistrates, or any commissioner or commissioners to be appointed by virtue of this Act, is and are authorised to execute, perform, and do the same.

SECT. 16.  
or commis-  
sioners  
under this  
Act.

16. And whereas by a certain Act passed in the twenty-eighth year of the reign of King Henry the Eighth, intituled "For Pirates," it is among other things enacted to the effect following, that whenever any commission for the punishment of certain offences therein named, shall be directed or sent to any place within the jurisdiction of the five ports, that then every such commission shall be directed unto the Lord Warden of the said port for the time being, or to his deputy, or unto three or four such persons as the Lord Chancellor for the time being shall name and appoint: And whereas by the said Act it is further enacted to the effect following, that every inquisition and trial to be had by virtue of such commission, shall be made and had by the inhabitants of the said five ports, or the members of the same: And whereas of a long time past, no such commission has been sent to any place within the jurisdiction of the Cinque Ports: Be it enacted, for the more certain and speedy administration of justice, That as often as his Majesty shall direct a commission, according to the provisions of the aforesaid Act, to the admiral or admirals, or his or their lieutenant deputy and deputies, it shall and may be lawful for his Majesty, on the application of the Lord Warden of the Cinque Ports, to direct such commission jointly to the admiral or admirals, or his or their lieutenant deputy and deputies, and also to the Lord Warden of the Cinque Ports for the time being, and to his deputy; and the Commissioners who shall sit by virtue of such commission, so jointly addressed, to whatever shire or place in the realm the same shall be limited, shall have full power and authority to inquire into, try, and determine all offences named in the said Act, or in any other Act, relating to proceedings under such commission, by the oaths of twelve good and lawful inhabitants in the shire limited in the said commission, whether the said offences shall have been committed within the jurisdictions of the Lord Admiral of England, or of the Lord Warden of the Cinque Ports; and all and every trial, conviction, judgment, and proceeding whatsoever under such commission, shall be as good and effectual to all intents and purposes in law and shall be followed by the same consequences to the offender or

Manner of  
issuing com-  
missions for  
the punish-  
ment of  
offences,  
agreeably to  
28 H. 8, c. 15.

## SECT. 18.

Reservation  
of the rights  
of the Admi-  
ralty Court,  
and of the  
Admiralty  
of the  
Cinque  
Ports.

offenders, as if the same were had by virtue of any separate commission to be issued under the provisions of the aforesaid Act of King Henry the Eighth : Provided always, and it is hereby further declared, that this Act, or anything hereinafter contained, shall not extend or be construed to extend to the taking away, abridging, prejudicing, or impeaching, in any manner whatever, the jurisdiction of the High Court of Admiralty of England, or the jurisdiction of the Admiralty Court of the Cinque Ports, two ancient towns, and their members ; but that it shall and may be lawful for the said courts respectively, and the judge or judges thereof for the time being, to have, use, exercise, and enjoy jurisdiction over all such matters, rights, and offences, as they have heretofore had, used, exercised, and enjoyed, as fully and effectually, to all intents and purposes whatever, as if this Act had not been made ; anything hereinbefore contained to the contrary in anywise notwithstanding.

S. 17 repealed by 17 & 18 Vict. c. 120, schedule.

Boundaries  
of the juris-  
diction of  
the Lord  
Warden of  
the Cinque  
Ports.

18. And whereas doubts have arisen as to the exact boundaries of the jurisdiction of the Lord High Admiral and the Lord Warden of the Cinque Ports, and it is highly expedient for the purposes of this Act that the same should be clearly set forth ; now it is hereby declared and enacted, That the boundaries of the jurisdiction of the Lord Warden of the Cinque Ports, in regard to any matter or thing contained in this Act, shall be and shall be deemed and taken to be as follows ; (that is to say), from a point to the westward of Seaford, in the county of Sussex, called Red Cliff, including the same ; thence passing in a line one mile without the sand or shoal called the Horse of Willingdon, and continuing the same distance without the ridge and new shoals ; and thence in a line within five miles of Cape Grisnez on the coast of France : thence round the shoal called the Overfalls, two miles distant from the same ; thence in a line without, and the same distance along the eastern side of the Galloper Sand, until the north end thereof bears west-north-west true bearing from the west-north-west bearing of the Galloper, it runs in a direct line across the shoal called the Thwart Middle, till it reaches the shore underneath the Maze Tower ; from thence following in a line of the shore up to Saint Osyth, in the county of Essex, and following the course of the shore up to the river Coln to the landing place nearest Brightlingsea ; from thence in a direct line to Shoe Bacon ; from thence to the Point of Shellness, on the Isle of Sheppey ; and from thence across the waters to Feversham ; and from thence following the line of coast round the North and South Forelands, and Beachey Head, till it reaches the said Red Cliff, including all the waters,

creeks, and havens comprehended between them : Provided always, and it is hereby declared, that nothing in this Act contained, shall extend, or be construed to extend, to enlarge or abridge the local limits of the ancient jurisdiction, rights, and privileges of the Lord High Admiral of England, or the Lord Warden or Admiral of the Cinque Ports respectively, or their respective representatives ; but that the same shall remain according to ancient usage, and that the description hereinbefore contained shall only be deemed applicable to the purposes of this Act ; anything herein contained to the contrary notwithstanding.

SECTS 43<sup>2</sup>,  
433.

Ss. 19 to 22 repealed by 17 & 18 Vict. c. 120.

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## 17 & 18 VICT. CAP. 104.

### PART VIII.

#### WRECKS, CASUALTIES, AND SALVAGE.

##### *Inquiries into Wrecks.*

432. In any of the cases following, that is to say, *Inquiries into Wrecks.*  
 Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of the United Kingdom ; *Inquiries to be instituted in cases of wreck and casualty.*  
 Whenever any ship causes loss or material damage to any other ship on or near such coasts ;  
 Whenever by reason of any casualty happening to or on board of any ship on or near such coasts loss of life ensues ;  
 Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in the United Kingdom ;  
 It shall be lawful for the inspecting officer of the Coast Guard or the principal officer of Customs residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the same occurred on or near the coasts of the United Kingdom, but if elsewhere at or near the place where such witnesses as aforesaid arrive or are found or can be conveniently examined, or for any other person appointed for the purpose by the Board of Trade, to make inquiry respecting such loss, abandonment, damage, or casualty ; and he shall for that purpose have all the powers given by the first part of this Act to inspectors appointed by the said Board.

433. If it appears to such officer or person as aforesaid, *Formal investigation either upon or without any such preliminary inquiry as*

SECTS. 434—  
436. aforesaid, that a formal investigation is requisite or expedient, or if the Board of Trade so directs, he shall apply to auy two justices or to a stipendiary magistrate to hear the case ; and such justices or magistrate shall thereupon proceed to hear and try the same, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he have power to make a summary conviction or order, or as near thereto as circumstances permit ; and it shall be the duty of such officer or person as aforesaid to superintend the management of the case, and to render such assistance to the said justices or magistrate as is in his power ; and, upon the conclusion of the case, the said justices or magistrate shall send a report to the Board of Trade, containing a full statement of the case and of their or his opinion thereou, accompanied by such report of or extracts from the evidence, and such observations (if any) as they or he may think fit.

Power to appoint nautical assessor.

434. In cases where nautical skill and knowledge are required, the Board of Trade shall have the power, either at the request of such justices or magistrate, or at its own discretion, to appoint some person of uautical skill and knowledge to act as assessor to such justices or magistrate ; and such assessor shall, upon the conclusion of the case, either signify his concurrence in their report by signing the same, or if he dissents therefrom shall signify such dissent and his reasons therefor to the Board of Trade (a).

Stipendiary magistrate to be the magistrate who is member of local marine board, and to be paid.

435. In places where there is a local marine board, and where a stipendiary magistrate is a member of such board, all such investigations as aforesaid shall, whenever he happens to be present, be made before such magistrate ; and there shall be paid to such magistrate in respect of his services under this Act such remuneration, whether by way of annual increase of salary or otherwise as her Majesty's Secretary of State for the Home Department, with the consent of the Board of Trade, may direct ; and such remuneration shall be paid out of the Mercantile Marine Fund.

Costs of such investigations.

436. The said justices or magistrate may make such order with respect to the costs of any such investigation or any portion thereof as they or he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before them or him ; and the Board of Trade may, if in any case it thinks fit so to do, pay the expense

(a) See 25 & 26 Vict. c. 63, s. 23, as to the appointment of assessors of engineering skill.

of any such investigation, and may pay to such assessor as aforesaid such remuneration as it thinks fit.

SECTS. 437—  
441.

437. In the case of any such investigation as aforesaid to be held in *Scotland*, the Board of Trade may, if it so thinks fit, remit the same to the Lord Advocate to be prosecuted in such manner as he may direct, and in case he so requires, with the assistance of such person of nautical skill and knowledge as the Board of Trade may appoint for the purpose.

Investiga-  
tions in  
Scotland.

438. Such justices or magistrate as aforesaid may, or in *Scotland* such person or persons as is or are directed by the Lord Advocate to conduct the investigation may, if they or he think fit, require any master or mate possessing a certificate of competency or service whose conduct is called in question or appears to them or him likely to be called in question in the course of such investigation, to deliver such certificate to them or him, and they or he shall hold the certificate so delivered until the conclusion of the investigation, and shall then either return the same to such master or mate, or, if their report is such as to enable the Board of Trade to cancel or suspend such certificate under the powers given to such board by the third part of this Act, shall forward the same to the Board of Trade, to be dealt with as such board thinks fit; and if any master or mate fails so to deliver his certificate when so required, he shall incur a penalty not exceeding fifty pounds (b).

Master or  
mate may  
be required  
to deliver  
certificate  
to be held  
until close  
of inquiry.

#### *Appointment and Duties of Receivers.*

439. The Board of Trade shall throughout the United Kingdom have the general superintendence of all matters relating to wreck; and it may, with the consent of the Commissioners of her Majesty's Treasury, appoint any officer of Customs or of the Coast Guard, or any officer of Inland Revenue, or, when it appears to such board to be more convenient, any other person, to be a Receiver of Wreck in any district, and to perform such duties as are hereinafter mentioned, and shall give due notice of every such appointment.

Appointment  
and duties of  
Receivers.

Board of  
Trade super-  
intendents  
of wreck,  
with power  
to appoint  
receivers.

440. No admiral, vice admiral, or other person, under whatever denomination, exercising Admiralty jurisdiction, shall as such, by himself or his agents, receive, take, or interfere with any wreck except as hereinafter mentioned.

Admiral not  
to interfere  
with wreck.

441. Whenever any ship or boat is stranded or in distress at any place on the shore of the sea or of any tidal water within the limits of the United Kingdom, the Receiver of the district within which such place is situate shall, upon being made acquainted with such accident, forthwith pro-

Duty of re-  
ceiver when  
any ship is  
stranded or  
in distress.

(b) See also 25 & 26 Vict. c. 63, s. 24.

SECTS. 442—  
444. ced to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions, as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof ; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding fifty pounds ; but it shall not be lawful for such Receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master.

Powers of receiver in case of such accident to any ship or boat.

442. The Receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo, and apparel, do the following things ; (that is to say,) (1.) Summon such number of men as he thinks necessary to assist him :

(2.) Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power :

(3.) Demand the use of any waggon, cart, or horses that may be near at hand :

And any person refusing without reasonable cause to comply with any summons, requisition, or demand so made as aforesaid, shall for every such refusal incur a penalty not exceeding one hundred pounds ; but no person shall be liable to pay any duty of assessed taxes in respect of any such waggon, cart, or horses by reason of the user of the same under this section.

All articles washed on shore, or lost, or taken from any ship or boat, to be delivered to the Receiver.

443. All cargo and other articles belonging to such ship or boat as aforesaid, that may be washed on shore, or otherwise be lost or taken from such ship or boat, shall be delivered to the Receiver ; and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the Receiver or to any person authorised by him to demand the same, shall incur a penalty not exceeding one hundred pounds ; and it shall be lawful for such Receiver or other person as aforesaid to take such cargo or article by force from the person so refusing to deliver the same.

Power of Receiver to suppress plunder and disorder by force.

444. Whenever any such accident as aforesaid occurs to any ship or boat, and any person plunders, creates disorder, or obstructs the preservation of such ship, boat, lives, or cargo as aforesaid, it shall be lawful for the Receiver to cause such person to be apprehended, and to use force for the suppression of any such plundering, disorder, or obstruction as aforesaid, with power to command all her Majesty's subjects to assist him in the use of such force ; and if any person is killed, maimed, or hurt by reason of his resisting the Receiver in the execution of the duties hereby com-

mitted to him, or any person acting under his orders, such Receiver or other person shall be free and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt.

445. During the absence of the Receiver from the place where any such accident as aforesaid occurs, or in places where no Receiver has been appointed under this Act, the following officers in succession, each in the absence of the other, in the order in which they are named, that is to say, any principal officer of Customs or of the Coast Guard, or officer of Inland Revenue, and also any sheriff, justice of the peace, commissioned officer on full pay in the naval service of her Majesty, or commissioned officer on full pay in the military service of her Majesty, may do all matters and things hereby authorised to be done by the Receiver, with this exception, that with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the Receiver is hereinbefore required, any officer so acting shall be considered as the agent of the Receiver, and shall place the same in the custody of the Receiver ; and no person so acting as substitute for any Receiver shall be entitled to any fees payable to Receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

446. Whenever any such accident as aforesaid occurs to any ship or boat, all persons may, for the purpose of rendering assistance to such ship or boat, or saving the lives of the persons on board the same, or the cargo or apparel thereof, unless there is some public road equally convenient, pass and repass either with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat ; and all damage that may be sustained by any owner or occupier in consequence of any such passing or repassing or deposit as aforesaid shall be a charge on the ship, boat, cargo, or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recoverable in the same manner as salvage is hereby made recoverable ; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

447. If the owner or occupier of any land over which any person is hereby authorised to pass or repass for any of the purposes hereinbefore mentioned does any of the following things, (that is to say,) (1.) Impedes or hinders any such person from so passing

Penalty on  
owners and  
occupiers  
of land  
refusing to  
allow car-

SECTS. 448—  
450.

riages, &c.  
to pass over  
their land.

Power of  
Receiver to  
institute  
examination  
with  
respect to  
ships in  
distress.

Original or  
certified  
copy of  
examina-  
tion to be  
*prima facie*  
evidence.

Rules to be

or repassing, with or without carriages, horses, and servants, by locking his gates, refusing, upon request, to open the same, or otherwise however;

- (2.) Impedes or hinders the deposit of any cargo or other article recovered from any such ship or boat, as hereinbefore mentioned;
- (3.) Prevents such cargo or other article from remaining so deposited for a reasonable time, until the same can be removed to a safe place of public deposit;

He shall for every such offence incur a penalty not exceeding one hundred pounds.

448. Any Receiver, or in his absence any justice of the peace, shall, as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship which may be or may have been in distress on the coasts of the United Kingdom, or any other person who may be able to give any account thereof or of the cargo or stores thereof, as to the following matters; (that is to say,) :

- (1.) The name and description of the ship ;
- (2.) The name of the master and of the owners ;
- (3.) The names of the owners of the cargo ;
- (4.) The ports or places from and to which the ship was bound ;
- (5.) The occasion of the distress of the ship ;
- (6.) The services rendered ;
- (7.) Such other matters or circumstances relating to such ship, or to the cargo on board the same, as the Receiver or justice thinks necessary : .

And such Receiver or justice shall take the examination down in writing, and shall make two copies of the same, of which he shall send one to the Board of Trade, and the other to the secretary of the committee for managing the affairs of Lloyd's in London, and such last-mentioned copy shall be placed by the said secretary in some conspicuous situation for the inspection of persons desirous of examining the same ; and for the purposes of such examination every such Receiver or justice as aforesaid shall have all the powers given by the first part of this Act to inspectors appointed by the Board of Trade.

449. Any examination so taken in writing as aforesaid, or a copy thereof, purporting to be certified under the hand of the Receiver or justice before whom such examination was taken, shall be admitted in evidence in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, as *prima facie* proof of all matters contained in such written examination.

450. The following rules shall be observed by any person

finding or taking possession of wreck within the United Kingdom ; (that is to say,) \_\_\_\_\_

SECTS. 451,  
452.

(1.) If the person so finding or taking possession of the same is the owner, he shall as soon as possible give notice to the Receiver of the district within which such wreck is found, stating that he has so found or taken possession of the same ; and he shall describe in such notice the marks by which such wreck is distinguished :

observed by  
persons  
finding  
wreck.

(2.) If any person not being the owner finds or takes possession of any wreck, he shall as soon as possible deliver the same to such Receiver as aforesaid :

And any person making default in obeying the provisions of this section shall incur the following penalties ; (that is to say,) \_\_\_\_\_

(3.) If he is the owner and makes default in performing the several things the performance of which is hereby imposed on an owner,

He shall incur a penalty not exceeding one hundred pounds :

(4.) If he is not the owner and makes default in performing the several things, the performance of which is hereby imposed on any person not being an owner,

He shall forfeit all claim to salvage ;

He shall pay to the owner of such wreck, if the same is claimed, but if the same is unclaimed then to the person entitled to such unclaimed wreck, double the value of such wreck (such value to be recovered in the same way as a penalty of like amount) ; and

He shall incur a penalty not exceeding one hundred pounds.

451. If any Receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof, or otherwise improperly dealt with, he may apply to any justice of the peace for a warrant, and such justice shall have power to grant a warrant, by virtue whereof it shall be lawful for the Receiver to enter into any house or other place wherever situate, and also into any ship or boat, and to search for, and to seize and detain any such wreck as aforesaid there found ; and if any such seizure is made in consequence of information that may have been given by any person to the Receiver, the informer shall be entitled by way of salvage to such sum not exceeding in any case five pounds as the Receiver may allow.

Power for  
Receivers to  
seize con-  
cealed  
wreck.

452. Every Receiver shall within forty-eight hours after taking possession of any wreck cause to be posted up in Notice of  
wreck to be

SECTS. 453—  
456. the custom-house of the port nearest to the place where such wreck was found or seized a description of the same and of any marks by which it is distinguished, and shall also, if the value of such wreck exceeds twenty pounds, but not otherwise, transmit a similar description to the secretary of the committee of Lloyd's aforesaid ; and such secretary shall post up the description so sent, or a copy thereof, in some conspicuous place, for the inspection of all persons desirous of examining the same.

given by  
Receiver.  
Goods  
deemed  
perishable  
or of small  
value may  
be sold im-  
mediately.

453. In cases where any wreck in the custody of any Receiver is under the value of five pounds, or is of so perishable a nature or so much damaged that the same cannot, in his opinion, be advantageously kept, or if the value thereof is not sufficient to defray the charge of warehousing, the Receiver may sell the same before the expiration of the period herein-after mentioned, and the money raised by such sale, after defraying the expenses thereof, shall be held by the Receiver for the same purposes and subject to the same claims for and to which the article sold would have been held and liable if it had remained unsold.

In cases  
where any  
lord of the  
manor or  
other person  
is entitled  
to unclaim-  
ed wreck,  
Receiver to  
give notice  
to bim.

454. In cases where any admiral, vice-admiral, lord of the manor, or other person is entitled for his own use to unclaimed wreck found on any place situate within a district for which a Receiver is appointed, such admiral, vice-admiral, lord of the manor, or other person shall deliver to such Receiver a statement containing the particulars of his title, and the address to which notices are to be sent; and upon such statement being so delivered, and proof made to the satisfaction of the Receiver of the validity of such title, it shall be his duty, whenever he takes possession of any wreck found at any such place, to send within forty-eight hours thereafter a description of the same and of any marks by which it is distinguished, directed to such address as aforesaid.

Payments  
to be made  
to Receiver.

455. There shall be paid to all Receivers appointed under this Act the expenses properly incurred by them in the performance of their duties, and also in respect of the several matters specified in the Table marked V. in the schedule hereto, such fees, not exceeding the amounts therein mentioned, as may from time to time be directed by the Board of Trade ; and the Receiver shall have the same lien and be entitled to the same remedies for the recovery of such expenses and fees as a salvor has or is entitled to in respect of salvage due to him ; but, save as aforesaid, no Receiver appointed under this Act shall as such be entitled to any remuneration whatsoever.

Disputes as  
to sums  
payable to  
Receiver to

456. Whenever any dispute arises in any part of the United Kingdom as to the amount payable to any Receiver in respect of expenses or fees, such dispute shall be deter-

mined by the Board of Trade, whose decision shall be <sup>SECTS. 457—</sup>  
final. <sup>459.</sup>

457. All fees received by any Receiver appointed under this Act, in respect of any services performed by him as <sup>be deter-</sup>  
Receiver, shall be carried to and form part of the Mercan-<sup>mined by</sup>  
tile Marine Fund, and a separate account thereof shall be <sup>Board of</sup>  
kept, and the monies arising therefrom shall be applied in <sup>Trade.</sup>  
defraying any expenses duly incurred in carrying into effect <sup>Application</sup>  
the purposes of the eighth part of this Act, in such manner <sup>of fees.</sup>  
as the Board of Trade directs.

### *Salvage in the United Kingdom.*

458. In the following cases, (that is to say,) <sup>Salvage</sup>

Whenever any ship or boat is stranded or otherwise <sup>in the United</sup>  
in distress on the shore of any sea or tidal water <sup>Kingdom.</sup>  
situate within the limits of the United Kingdom,  
and services are rendered by any person,

- (1.) In assisting such ship or boat;
- (2.) In saving the lives of the persons belonging  
to such ship or boat; (c)
- (3.) In saving the cargo or apparel of such ship or  
boat, or any portion thereof;

<sup>Salvage in</sup>  
<sup>respect of</sup>  
<sup>services</sup>  
<sup>rendered in</sup>  
<sup>the United</sup>  
<sup>Kingdom.</sup>

And whenever any wreck is saved by any person  
other than a Receiver within the United Kingdom;  
There shall be payable by the owners of such ship or boat,  
cargo, apparel, or wreck, to the person by whom such ser-  
vices or any of them are rendered or by whom such wreck  
is saved, a reasonable amount of salvage, together with all  
expenses properly incurred by him in the performance of  
such services or the saving of such wreck, the amount of  
such salvage and expenses (which expenses are herein-  
after included under the term salvage) to be determined  
in case of dispute in manner herein-after mentioned.

459. Salvage in respect of the preservation of the life or <sup>Salvage for</sup>  
lives of any person or persons belonging to any such ship <sup>life may be</sup>  
or boat as aforesaid shall be payable by the owners of the <sup>paid by</sup>  
ship or boat in priority to all other claims for salvage; <sup>Board of</sup>  
and in cases where such ship or boat is destroyed, or where <sup>Trade out of</sup>  
the value thereof is insufficient, after payment of the actual <sup>Mercantile</sup>  
expenses incurred, to pay the amount of salvage due in <sup>Marine</sup>  
respect of any life or lives, the Board of Trade may in its <sup>Fund.</sup>  
discretion award to the salvors of such life or lives out of  
the Mercantile Marine Fund such sum or sums as it deems  
fit, in whole or part satisfaction of any amount of salvage  
so left unpaid in respect of such life or lives.

(c) See 24 Vict. c. 10, s. 9, and 25 & 26 Vict. c. 63, s. 59, which  
extends the jurisdiction of the Court of Admiralty in cases of life  
salvage.

SECTS. 460,  
461.

Disputes as  
to salvage,  
how to be  
settled.

460. Disputes with respect to salvage arising within the boundaries of the Cinque Ports shall be determined in the manner in which the same have hitherto been determined; but whenever any dispute arises elsewhere in the United Kingdom between the owners of any such ship, boat, cargo, apparel, or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise,

Then, if the sum claimed does not exceed two hundred pounds (*d*),

Such dispute shall be referred to the arbitration of any two justices of the peace resident as follows; (that is to say,) In case of wreck, resident at or near the place where such wreck is found:

In case of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises:

But if the sum claimed exceeds two hundred pounds,

Such dispute may, with the consent of the parties, be referred to the arbitration of such justices as aforesaid, but if they do not consent shall in England be decided by the High Court of Admiralty of England, in Ireland by the High Court of Admiralty of Ireland, and in Scotland by the Court of Session; subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than two hundred pounds, they shall not, unless the Court certifies that the case is a fit one to be tried in a superior court, recover any costs, charges, or expenses incurred by them in the prosecution of their claim:

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salved, or of their respective agents.

461. Whenever in pursuance of this Act any dispute as

(*d*) See 25 & 26 Vict. c. 63, s. 49, extending the jurisdiction of the justices to cases where the value of the property is under 1000*l.*, and to cases of salvage outside the limits of United Kingdom. See also ss. 50 and 51 of the same statute.

Manner in  
which

to salvage is referred to the arbitration of two justices, they may either themselves determine the same, with power to call to their assistance any person conversant with maritime affairs as assessor, or they may if a difference of opinion arises between them, or without such difference, if they think fit, appoint some person conversant with maritime affairs as umpire to decide the point in dispute ; and such justices or their umpire shall make an award as to the amount of salvage payable, within the following times, that is to say, the said justices within forty-eight hours after such dispute has been referred to them, and the said umpire within forty-eight hours after his appointment, with power nevertheless for such justices or umpire by writing under their or his hands or hand to extend the time within which they and he are hereby respectively directed to make their or his award.

462. There shall be paid to every assessor and umpire who may be so appointed as aforesaid in respect of his services such sum not exceeding five pounds as the Board of Trade may from time to time direct ; and all the costs of such arbitration, including any such payments as aforesaid, shall be paid by the parties to the dispute, in such manner and in such shares and proportions as the said justices or as the said umpire may direct by their or his award.

463. The said justices or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

464. If any person is aggrieved by the award made by such justices or such umpire as aforesaid, he may in England appeal to the High Court of Admiralty of England, in Ireland to the High Court of Admiralty of Ireland, and in Scotland to the Court of Session ; but no such appeal shall be allowed unless the sum in dispute exceeds fifty pounds, nor unless within ten days after the date of the award the appellant gives notice to the justices to whom the matter was referred of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceeding as according to the practice of the Court of Appeal is necessary for the institution of an appeal, within twenty days from the date of the award.

465. Whenever any appeal is made in manner herein-before provided, the justices shall transmit to the proper officer of the Court of Appeal a copy on unstamped paper certified under their hands to be a true copy of the proceedings had before such justices or their umpire, if any, and of the award so made by them or him, accompanied

SECTS. 462—  
465  
justices  
may decide  
disputes.

Costs of  
arbitration.

Justices  
may call for  
documents,  
and admini-  
ster oaths.

Appeal to  
Courts of  
Admiralty.

Justices to  
transmit  
copy of pro-  
ceedings  
and certifi-  
cate of value  
to Court of  
Appeal.

SECTS. 466—  
468.

with their or his certificate in writing of the gross value of the article respecting which salvage is claimed ; and such copy and certificate shall be admitted in the Court of Appeal as evidence in the cause.

Payment of  
salvage, to  
whom to be  
made in  
case of dis-  
pute as to  
apportion-  
ment.

466. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the Receiver of the district for liberty to pay the amount so ascertained to him ; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and the services in respect of which it is made ; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned ; but if the amount exceeds two hundred pounds, it shall be apportioned in manner herein-after mentioned.

Apportion-  
ment of  
salvage.

467. Upon the receipt of any such amount as aforesaid the Receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any monies that may appear to him to be payable to any absent parties ; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the monies so distributed.

Manner of  
enforcing  
payment of  
salvage.

468. Whenever any salvage is due to any person under this Act, the Receiver shall act as follows ; (that is to say,) (1.) If the sum is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof,

He shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by some competent Court for the detention of such ship, boat, cargo, or apparel :

(2). If the same is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained,

He shall detain such wreck until payment is made, or process has been issued in manner aforesaid :

But it shall be lawful for the Receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, or apparel, or wreck so detained by him as aforesaid ; and in cases where the claim for salvage exceeds two hundred pounds it shall be lawful in England for the High Court of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland, for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties ; and in all cases where bond or other security is given to the Receiver for an amount exceeding two hundred pounds it shall be lawful for the salvor or for the owner of the property salved, or their respective agents, to institute proceedings in such last-mentioned courts for the purpose of having the questions arising between them adjudicated upon, and the said Courts may enforce payment of the said bond or other security, in the same manner as if bail had been given in the said Courts.

SECT. 469.

469. Whenever any ship, boat, cargo, apparel, or wreck is detained by any Receiver for nonpayment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases, that is to say,

- (1.) In cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due ;
- (2.) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of such first tribunal ;
- (3.) In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such monition as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days ;

Power of  
Receiver to  
sell pro-  
perty salved  
in cases of  
nonpay-  
ment.

The Receiver may forthwith sell such ship, boat, cargo, apparel, or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same.

SECTS. 470—  
474.

Subject to payment of expenses, fees, and salvage, owner entitled to wreck.

*Unclaimed Wreck in the United Kingdom.*

Receiver to deliver up possession of unclaimed wreck to lord of manor or other person entitled.

Disputed title to wreck, how to be decided.

Appeal from decision of justices.

Power of the Board of Trade on behalf of the Crown to purchase rights of wreck.

470. Subject to the payment of such expenses, fees, and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the Receiver within one year from the date at which such wreck has come into the possession of the Receiver, shall be entitled to have the same delivered up to him.

*Unclaimed Wreck in the United Kingdom.*

471. In the event of no owner establishing a claim to wreck found in the United Kingdom before the expiration of a year from the date at which the same has come into the possession of the Receiver, then, if any such admiral, vice-admiral, lord of any manor, or other person as aforesaid has given notice to and has proved to the satisfaction of the Receiver that he is entitled to wreck found at such place, the Receiver shall, upon payment of all expenses, fees, and salvage due in respect of such wreck, deliver up possession thereof to such admiral, vice-admiral, lord of the manor or other person; and in case of dispute as to the amount of the sums so payable, and also in case of default being made in payment thereof, such dispute shall be determined and payment enforced in the manner in which such amount and payment is hereby directed to be determined and enforced in cases where any owner establishes his claim to wreck (e).

472. If any dispute arises between any Receiver and any such admiral, vice-admiral, lord of any manor, or other person as aforesaid as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by two justices in the same manner in which disputes as to salvage coming within the jurisdiction of justices are hereinbefore directed to be determined.

473. If any party to such dispute is unwilling to refer the same to two justices, or, having so referred the same, is dissatisfied with their decision, he may within six months from the expiration of such year as aforesaid or from the date of such decision as aforesaid, as the case may be, take such proceedings as he may be advised in any court of law, equity, or admiralty having jurisdiction in the matter, for establishing his title.

474. The Board of Trade shall have power, with the consent of the Treasury, out of the revenue arising under the eighth part of this Act, for and on behalf of Her Majesty, her heirs and successors, to purchase all such rights to wreck as may be possessed by any person or body cor-

(e) See 25 & 26 Vict. c. 63, s. 52, providing that the delivering up of wreck by Receiver shall operate as a discharge to him.

porate, other than her Majesty; and for the purpose of facilitating such purchases the provisions of the "Lands Clauses Consolidation Act, 1845," and the "Lands Clauses Consolidation (Scotland) Act, 1845," relating to the purchase of lands by agreement, shall be incorporated with this Act; and in the construction of this Act and the said incorporated Acts this Act shall be considered to be the "Special Act;" and any such rights to wreck as aforesaid shall be considered as an interest in land authorised to be taken by the special Act, and her Majesty, her heirs, and successors, shall be considered as the promoters of the undertaking.

475. If no owner establishes his claim to wreck found at any place before the expiration of such period of a year as aforesaid, and if no admiral, vice-admiral, lord of any manor, or person other than her Majesty, her heirs, and successors, is proved to be entitled to such wreck, the Receiver shall forthwith sell the same, and after payment of all expenses attending such sale, and deducting therefrom his fees, and all expenses (if any) incurred by him, and paying to the salvors such amount of salvage as the Board of Trade may in each case or by any general rule determine, pay the same into the receipt of her Majesty's Exchequer in such manner as the Treasury may direct, and the same shall be carried to and form part of the consolidated fund of the United Kingdom (f).

#### *Jurisdiction of the High Court of Admiralty.*

476. Subject to the provisions of this Act, the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land.

#### *Offences in respect of Wreck.*

477. Whenever any ship or boat is stranded or otherwise in distress on or near the shore of any sea or tidal water in the United Kingdom, and such ship or boat, or any part of the cargo or apparel thereof, is plundered, damaged, or destroyed by any persons riotously and tumultuously assembled together, whether on shore or afloat, full compensation shall be made to the owner of such ship, boat, cargo, or apparel, as follows; (that is to say,) (f) See also 25 & 26 Vict. c. 63, s. 53.

*Jurisdiction  
of the High  
Court of  
Admiralty.*

*High Court of Admiralty may decide on all salvage cases, whether on sea or land.*

*Offences in  
respect of  
Wreck.*

*In case of  
ship  
wrecked  
being plun-  
dered by a  
tumultuous  
asscmblage*

SECTS. 475—  
477.

SECT. 478.

the hundred  
to be liable  
for damages.  
7 & 8 Geo. 4,  
c. 31.

3 & 4 Wm. 4.  
c. 37, s. 22.

1 Geo. I,  
st. 2, c. 5.

Penalty for  
plundering  
in cases of  
shipwreck,  
for obstruct-  
ing the  
saving of  
ship-  
wrecked  
property,  
and for  
secreting,  
the same.

In England by the inhabitants of the hundred, wapen-take, ward, or district in the nature of a hundred, by whatever name denominated, in or nearest to which the said offence is committed, in manner provided by an Act of the eighth year of the reign of King George the Fourth, chapter thirty-one, in case of destruction of churches and other buildings by a riotous assemblage, or as near thereto as circumstances permit :

In Ireland by the inhabitants of the county, county of a city or town, barony, town or towns, parish or parishes, in or nearest to which such offence was committed, in manner provided by an Act of the fourth year of the reign of King William the Fourth, chapter thirty-seven, for the recovery of satisfaction and amends for the malicious demolition of or injury to churches, chapels, and other buildings used for religious worship, according to the usage of the United Church of England and Ireland, or as near thereto as circumstances permit :

In Scotland, by the inhabitants of the county, city, or borough in or nearest to which such offence is committed, in manner provided by an Act of the first year of King George the First, statute two, chapter five, with respect to prosecutions for repairing the damages of any churches and other buildings, or as near thereto as circumstances permit.

**478.** Every person who does any of the following Acts, (that is to say,)

- (1.) Wrongfully carries away or removes any part of any ship or boat stranded or in danger of being stranded or otherwise in distress on or near the shore of any sea or tidal water, or any part of the cargo or apparel thereof, or any wreck ; or
- (2.) Endeavours in any way to impede or hinder the saving of such ship, boat, cargo, apparel, or wreck ; or
- (3.) Secretes any wreck, or obliterates or defaces any marks thereon ;

Shall, in addition to any other penalty or punishment he may be subject to under this or any other Act or law, for each such offence incur a penalty not exceeding fifty pounds ; and every person, not being a Receiver or a person hereinbefore authorised to take the command in cases of ships being stranded or in distress, or not acting under the orders of such Receiver or person, who, without the leave of the master, endeavours to board any such ship or boat as aforesaid, shall for each offence incur a penalty not exceeding fifty pounds ; and it shall be lawful for the master of such ship or boat to repel by force any such person so attempting to board the same.

479. If any person takes into any foreign port or place any ship or boat stranded, derelict, or otherwise in distress on or near the shore of the sea or of any tidal water situate within the limits of the United Kingdom, or any part of the cargo or apparel therenf, or anything belonging thereto, or any wreck found within such limits as aforesaid, and there sells the same, he shall be guilty of felony, and be subject to penal servitude for a term not exceeding four years.

SECTS. 479,  
480.

Penalty for  
selling  
wreck in  
foreign  
ports.

*Dealers in Marine Stores and Manufacturers of Anchors.*

480. Every person dealing in buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any description, shall conform to the following regulations ; (that is to say,) *Dealers in  
Marine  
Stores and  
Manufacturers of  
Anchors.*

(1.) He shall have his name, together with the words "Dealer in Marine Stores," painted distinctly in letters of not less than six inches in length on every warehouse or other place of deposit belonging to him ; Regulations  
to be ob-  
served by  
dealers in  
marine  
stores.

If he does not he shall incur a penalty not exceeding twenty pounds :

(2.) He shall keep a book or books, fairly written, and shall enter therein an account of all such marine stores as he may from time to time become possessed of, stating, in respect of each article, the time at which and the person from whom he purchased or received the same, adding, in the case of every such last-mentioned person, a description of his business and place of abode ; If he does not he shall incur for the first offence a penalty not exceeding twenty pounds, and for every subsequent offence a penalty not exceeding fifty pounds :

(3.) He shall not, by himself or his agents, purchase marine stores of any description from any person apparently under the age of sixteen years ; If he does so he shall incur for the first offence a penalty not exceeding five pounds, and for every subsequent offence a penalty not exceeding twenty pounds :

(4.) He shall not cut up any cable, or any similar article, exceeding five fathoms in length, or unlay the same into twine or paper stuff, on any pretence whatever, without obtaining such permit and publishing such notice of his having so obtained the same as is herein-after mentioned ; If he does so he shall incur for the first offence a penalty not exceeding twenty pounds, and

SECTS. 481,  
482.

Manner of  
obtaining  
permit to  
cut up  
cables.

for every subsequent offence a penalty not exceeding fifty pounds.

481. In order to obtain such permit as aforesaid a dealer in marine stores shall make a declaration before some justice of the peace having jurisdiction over the place where such dealer resides containing the following particulars ; (that is to say,)

- (1.) A statement of the quality and description of the cable or other like article about to be cut up or unlaid :
- (2.) A statement that he purchased or otherwise acquired the same *bond fide* and without fraud, and without any knowledge or suspicion that the same had been come by dishonestly :
- (3.) A statement of the name and description of the person from whom he purchased or received the same :

And it shall be lawful for the justice before whom any such declaration is made, or for the Receiver of the district in which such dealer in marine stores resides, upon the production of any such declaration as aforesaid, to grant a permit authorising him to cut up or unlaid such cable or other like article.

Permit to be  
advertised  
before  
dealer pro-  
ceeds to act  
thereon.

482. No dealer in marine stores who has obtained such permit as aforesaid shall proceed by virtue thereof to cut up or unlaid any cable or other like article until he has for the space of one week at the least before doing any such act published in some newspaper published nearest to the place where he resides one or more advertisements notifying the fact of his having so obtained a permit, and specifying the nature of the cable or other article mentioned in the permit, and the place where the same is deposited, and the time at which the same is intended to be so cut up or unlaid ; and if any person suspects or believes that such cable or other article is his property, he may apply to any justice of the peace for a warrant ; and such justice of the peace may, on the applicant making oath, or, if a person entitled to make an affirmation, making an affirmation in support of such his suspicion or belief, grant a warrant by virtue whereof the applicant shall be entitled to require the production by such dealer as aforesaid of the cable or other article mentioned in the permit, and also of the book of entries hereinbefore directed to be kept by every dealer in marine stores ; and, upon such cable or other article and book of entries being produced, to inspect and examine the same ; and if any dealer in marine stores makes default in complying with any of the provisions of this section, he shall for the first offence incur a penalty not exceeding twenty pounds, and for every subsequent offence a penalty not exceeding fifty pounds.

483. Every manufacturer of anchors shall, in case of each anchor which he manufactures, mark in legible characters on the crown and also on the shank under the stock his name or initials, with the addition of a progressive number and the weight of such anchor ; and if he makes default in doing so he shall for each offence incur a penalty not exceeding five pounds.

SECTS. 483—  
486.

Manufacturers to place marks on anchors.

### *Salvage by Her Majesty's Ships.*

484. In cases where salvage services are rendered by any ship belonging to her Majesty or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores or other articles belonging to her Majesty supplied in order to effect such services, or for any other expense or loss sustained by her Majesty by reason of such services.

No claim for salvage services to be allowed in respect of loss or risk of her Majesty's ships or property.

485. No claim whatever on account of any salvage services rendered to any ship or cargo or to any appurteuances of any ship by the commander or crew or part of the crew of any of her Majesty's ships shall be finally adjudicated upon unless the consent of the Admiralty has first been obtained, such consent to be signified by writing under the hand of the Secretary to the Admiralty ; and if any person who has originated proceedings in respect of any such claim fails to prove such consent to the satisfaction of the Court, his suit shall stand dismissed and he shall pay all the costs of such proceedings ; provided that any document purporting to give such consent and to be signed by the Secretary to the Admiralty shall be *prima facie* evidence of such consent having been given.

Claims for salvage by her Majesty's officers not to be determined without consent of Admiralty.

486. Whenever services for which salvage is claimed are rendered to any ship or cargo, or to any part of any ship or cargo, or to any appurtenances of any ship, at any place out of the United Kingdom and the four seas adjoining thereto, by the commander or crew or part of the crew of any of her Majesty's ships, the property alleged to be salved shall, if the salvor is justified by the circumstances of the case in detaining it at all, be taken to some port where there is either a consular officer or a Vice-Admiralty Court ; and within twenty-four hours after arriving at such port the said salvor and the master or other person in charge of the property alleged to be salved shall each deliver to the consular officer or vice-admiralty judge there a statement verified on oath, specifying, so far as they respectively can, and so far as the particulars required apply to the case,

Steps to be taken when salvage services have been rendered by her Majesty's ships abroad.

- (1.) The place, condition, and circumstances in which the

SECT. 486.

said ship, cargo, or property was at the time when the services were rendered for which salvage is claimed :

(2.) The nature and duration of the services rendered :  
And the salvor shall add to his statement,

(3.) The proportion of the value of the said ship, cargo, and property, and of the freight which he claims for salvage, or the values at which he estimates the said ship, freight, cargo, and property respectively, and the several amounts that he claims for salvage in respect of the same :

(4.) Any other circumstances he thinks relevant to the said claim :

And the said master or other person in charge of the said ship, cargo, or property shall add to his statement,

(3.) A copy of the certificate of registry of the said ship, and of the indorsements thereon, stating any charge which (to his knowledge and belief) has occurred in the particulars contained in such certificate ; and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the incumbrances and certificates of mortgage or sale, if any, affecting the same, and the names and places of business of the owners and incumbrancers :

(4.) The name and place of business or residence of the freighter (if any) of the said ship, and the freight to be paid for the voyage she is then on :

(5.) A general account of the quantity and nature of the cargo at the time the salvage services were rendered :

(6.) The name and place of business or residence of the owner of such cargo and of the consignee thereof :

(7.) The values at which the said master estimates the said ship, cargo and property, and the freight respectively, or, if he thinks fit, in lieu of such estimated value of the cargo, a copy of the ship's manifest :

(8.) The amounts which the master thinks should be paid as salvage for the services rendered :

(9.) An accurate list of the property saved, in cases where the ship is not saved :

(10.) An account of the proceeds of the sale of the said ship, cargo, or property, in cases where the same or any of them are sold at such port as aforesaid :

(11.) The number, capacities, and condition of the crew of the said ship at the time the said services were rendered :

(12.) Any other circumstances he thinks relevant to the matters in question :

(13.) A statement of his willingness to execute a bond,

in the form in the table marked W. in the schedule hereto, in such amount as the said consular officer or vice-admiralty judge may fix.

SECTS. 487—  
491.

487. The said consular officer or judge, as the case may be, shall within four days after receiving the aforesaid statements fix the amount to be inserted in the said bond at such sum as he thinks sufficient to answer the demand for the salvage services rendered ; but such sum shall not exceed one half of the value which in his estimation the said ship, freight, and cargo, or any parts thereof in respect of which salvage is claimed, are worth ; and the said consular officer or judge may, if either of the aforesaid statements is not delivered to him within the time hereby required, proceed *ex parte*, but he shall in no case under this Act require the cargo to be unladen ; and the said consular officer may in any proceeding under this Act relating to salvage take affidavits and receive affirmations.

Consular  
officer or  
judge to fix  
amount for  
which a  
bond is to be  
given.

488. The said consular officer or judge shall send notice of the sum which he has so fixed as aforesaid to the said salvor and the said master ; and upon such master executing a bond in such form as aforesaid, with the said sum inserted therein, in the presence of the said officer or judge (who shall attest the same), and delivering the same to the said salvor, the right of the said salvor to detain or retain possession of the said ship, cargo, or property, or any of them, in respect of the said salvage claim, shall cease.

On master  
executing  
bond, the  
right of  
detention  
to cease.

489. If the ship, cargo, or property in respect of which the claim for salvage is made is not owned by persons domiciled in her Majesty's dominions, the right of the salvor to detain or retain possession thereof shall not cease unless the master procures, in addition to the said bond, such security for the due performance of the conditions thereof as the said officer or judge considers sufficient for the purpose, and places the same in the possession or custody of the said officer or judge, or, if the salvor so desires, in the possession or custody of the said officer or judge jointly with any other person whom the said salvor appoints for the purpose.

Provision for  
additional  
security in  
the case of  
ships owned  
by persons  
resident out  
of her  
Majesty's  
dominions.

490. The said consular officer or judge shall at the earliest opportunity transmit the said statements and documents so sent to him as aforesaid, and a notice of the sum he has so fixed as aforesaid, to the High Court of Admiralty of England, or if the said salvor and the said master or other person in charge as aforesaid agree that the said bond shall be adjudicated upon by any Vice-Admiralty Court, to such court.

Documents  
to be sent  
to England.

491. The said bond shall bind the respective owners of the said ship, freight, and cargo, and their respective heirs, executors, and administrators, for the salvage adjudged to

Whom the  
bond shall  
bind.

SECTS. 492—  
496. be payable in respect of the said ship, freight and cargo respectively.

Court in  
which it is  
to be adjudicated on.  
  
492. The said bond shall be adjudicated on and enforced by the High Court of Admiralty in England, or if the said salvor and master at the time of the execution of the said bond agree upon any Vice-Admiralty Court, then by such Vice-Admiralty Court; and aoy such Vice-Admiralty Court may in every proceeding under this Act have and exercise all powers and authorities whatsoever which the said High Court of Admiralty now has or at any time may have in any proceeding whatsoever before it ; and iu cases where any security for the due performance of the conditions of the said bond has been placed in the possession or custody of the said consular officer or vice-admiralty judge or of such officer or judge jointly with any other person, the person or persous having the custody of such security shall respectively deal with the same in such manuer as the court that adjudicates on the bond directs.

Power of  
High Court  
of Admiralty  
to enforce bonds.  
  
493. The said High Court of Admiralty shall have power to enforce any bond given in pursuance of this Act in any Vice-Admiralty Court in any part of her Majesty's dominions ; and all courts in Scotland, Ireland, and the islands of Jersey, Guernsey, Alderney, Sark, and Man, exercising Admiralty jurisdiction shall, upon application, aid and assist the High Court of Admiralty in enforciug the said bonds.

Saving  
clause.  
  
494. Any such salvor as aforesaid of any ship, cargo, or property who elects not to proceed under this Act shall have no power to detain the said ship, cargo, or property, but may proceed otherwise for the enforcement of his salvage claim as if this Act had not been passed ; and nothing in this Act contained shall abridge or affect the rights of salvors, except in the cases by it provided for.

Documents  
free from  
duty.  
  
495. All bonds, statements, agreements, and other documents made or executed in pursuance of the eighth part of this Act shall, if so made or executed out of the United Kingdom, be exempt from stamp duty.

Punishment  
for forgery  
and false  
representations.  
  
496. Every person who, in any proceeding under provisions contained in the eighth part of this Act relating to salvage by her Majesty's ships, forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every person who in any such proceeding puts off or makes use of any such forged or altered document, knowing the same to be so forged or altered, or who in any such proceeding gives or makes, or assists in giving or making, or procures to be given or made, any false evidence or representation, knowing the same to be false, shall be punishable with imprisonment, with or without hard labour, for any period not exceeding two years, or, if

summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months (g).

SECTS. 497,  
498.

*Salvage, General.*

497. Whenever services for which salvage is claimed are rendered either by the commander or crew or part of the crew of any of her Majesty's ships, or of any other ship, and the salvor voluntarily agrees to abandon his lien upon the ship, cargo, and property alleged to be salved, upon the master or other person in charge thereof entering into a written agreement attested by two witnesses to abide the decision of the said High Court of Admiralty or of any Vice-Admiralty Court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the said agreement, such agreement shall bind the said ship and the said cargo and the freight payable therefor respectively, and the respective owners of the said ship, freight, and cargo for the time being, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo, and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced in the same manner as the bonds provided for by the eighth part of this Act, in the case of detention for salvage services rendered by her Majesty's ships; and upon such agreement being made the salvor and the master or other person in charge as aforesaid shall respectively make such statements as are hereinbefore required to be made by them in case of a bond being given, except that such statements need not be made upon oath; and the salvor, shall, as soon as practicable, transmit the said agreement and the said statements to the court in which the said agreement is to be adjudicated upon.

*Salvage,  
(General).*

Voluntary  
agreement  
may be  
made which  
shall have  
the same  
effect as the  
bond above  
mentioned.

498. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be, then if any delay or dispute arises as to the apportionment thereof, any court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just; and may for that purpose, if it thinks fit, appoint any person to carry such apportionment into effect, and may compel any person in whose hands or under whose

Powers for  
courts  
having Ad-  
miralty  
jurisdiction  
to apportion  
salvage.

(g) See as to remuneration of Coast Guard, 18 & 19 Vict. c. 91, s. 20.

SECTS. 489—  
501.

control such amount may be to distribute the same, or to bring the same into court, to be there dealt with as the court may direct, and may for the purposes aforesaid issue such monitious or other processes as it thinks fit.

*Miscellaneous.*

*Miscella-  
neous.*

Foreign  
goods found  
derelict to  
be subject  
to the same  
duties as on  
importa-  
tion.

Goods saved  
from ships  
wrecked to  
be forward-  
ed to the  
ports of  
their origi-  
nal destina-  
tion.

Provision as  
to certain  
terms in  
Scotland.

499. All wreck, being foreign goods brought or coming into the United Kingdom or the Isle of Man, shall be subject to the same duties as if the same were imported into the United Kingdom or the Isle of Man respectively; and if any question arises as to the origin of such goods, they shall be deemed to be the produce of such country as the Commissioners of Customs may upon investigation determine.

500. The Commissioners of Customs and Excise shall permit all goods, wares, and merchandise saved from any ship stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination, and all goods, wares, and merchandise saved from any ship stranded or wrecked on its outward voyage to be returned to the port at which the same were shipped; but such commissioners are to take security for the due protection of the revenue in respect of such goods, wares, and merchandise.

501. All matters and things that may in pursuance of the eighth part of this Act be done by or to any justice, or any two justices, may in Scotland be done also by or to the sheriff of the county, including the sheriff substitute; and the expression "lord or lady of a manor" shall in the eighth part of this Act, so far as regards Scotland, include "heritable proprietor duly infest." }

18 & 19 VICT. CAP. 91.

AN ACT TO FACILITATE THE ERECTION AND MAINTENANCE  
OF COLONIAL LIGHTHOUSES, AND OTHERWISE TO AMEND  
THE MERCHANT SHIPPING ACT, 1854.

[14th August, 1855.]

*Wrecks,  
Casualties,  
and Salvage.*

PART VIII.  
of Merchant  
Shipping  
Act, 1854.

19. Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or belonging to or forming part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the consul general of the country to which such ship, or in the

case of cargo, to which the owners of such cargo, may have belonged, or any consular officer of such country authorized in that behalf by any treaty or agreement with such country, shall in the absence of the owner of such ship or articles, and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles.

SECT. 49.

20. In cases where services are rendered by officers or men of the Coast Guard Service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the said services remuneration according to a scale to be fixed by the Board of Trade, so, however, that such scale shall not exceed any scale by which payment to officers and men of the Coast Guard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated ; and such remuneration shall be recoverable by the same means and shall be paid to the same persons and accounted for and applied in the same manner as fees received by Receivers appointed under the Merchant Shipping Act, 1854.

In case of  
wreck of  
foreign  
ships, consnl  
general to  
be deemed  
agent of  
owner.

Remunera-  
tion for ser-  
vices by  
Coast  
Guard.

## 25 &amp; 26 VICT. CAP. 63.

AN ACT to amend the Merchant Shipping Act, 1854 ; the Merchant Shipping Amendment Act, 1855 ; and the Customs Consolidation Act, 1853.

[26 July, 1862.]

*Wreck and Salvage (Part VIII. of Merchant Shipping Act, 1854).*

49. The provisions contained in the eighth part of the principal Act for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows ; (that is to say,) Wreck and  
Salvage.

Extension  
and amend-  
ment of

summary  
jurisdiction  
in small sal-  
vage cases.

- (1.) Such provision shall extend to all cases in which the value of the property saved does not exceed one thousand pounds, as well as the cases provided for by the principal Act : summary  
jurisdiction  
in small sal-  
vage cases.
- (2.) Such provisions shall be held to apply whether the

SECTS. 50,  
51.

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salvage service has been rendered within the limits of the United Kingdom or not :

- (3.) It shall be lawful for one of her Majesty's principal Secretaries of State, or in Ireland for the Lord Lieutenant or other chief governor or governors, to appoint out of the justices for any borough or county a rota of justices by whom jurisdiction in salvage cases shall be exercised :
- (4.) When no such rota is appointed, it shall be lawful for the salvors, by writing addressed to the justice's clerk, to name one justice, and for the owner of the property saved in like manner to name the other :
- (5.) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at petty sessions :
- (6.) It shall be competent for any stipendiary magistrate, and also in England for any county court judge, in Scotland for the sheriff or sheriff substitute of any county, and in Ireland for the recorder of any borough in which there is a recorder, or for the chairman of quarter sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices :
- (7.) It shall be lawful for one of her Majesty's principal Secretaries of State to determine a scale of costs to be awarded in salvage cases by any such justices or court as aforesaid :
- (8.) All the provisions of the principal Act relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this Act, extend and apply to all such proceedings, whether under the principal Act or this Act, or both of such Acts.

Receiver  
may appoint  
a valuer in  
salvage  
cases.

50. Whenever any salvage question arises the Receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties ; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the Receiver, shall be received in evidence in any subsequent proceeding ; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Board of Trade may direct.

Jurisdiction  
of Court of  
Session in  
salvage  
cases.

51. The words "court of session" in the four hundred and sixty-eighth section of the principal Act shall be deemed to mean and include either division of the Court of Session or the lord ordinary officiating on the bills during vacation.

52. Upon delivery of wreck or of the proceeds of wreck by any Receiver to any person in pursuance of the provisions of the eighth part of the principal Act, such Receiver shall be discharged from all liability in respect thereof, but such delivery shall not be deemed to prejudice or affect any question concerning the right or title to the said wreck which may be raised by third parties, nor shall any such delivery prejudice or affect any question concerning the title to the soil on which the wreck may have been found.

SECTS. 52, 53.

Delivery of  
wreck by  
Receiver not  
to prejudice  
title.

53. Whereas by the principal Act it is provided that the proceeds of wreck, if the same is not claimed by the owner within a year, and if no person other than her Majesty, her heirs and successors, is proved to be entitled thereto, shall, subject to certain deductions, be paid into the receipt of her Majesty's exchequer in such manner as the Commissioners of the Treasury may direct, and that the same shall be carried to and form part of the Consolidated Fund of the United Kingdom :

Crown  
rights to  
wrecks.

And whereas doubts have been entertained whether the said last-recited provision is consistent with the arrangements concerning the hereditary revenues of the Crown effected by the Act of the first year of her present Majesty, chapter two : And whereas doubts have been entertained 1 Vict. c. 2. whether due provision is made by the said Act for paying to the revenues of the Duchies of Lancaster and Cornwall respectively such of the said proceeds as may belong to those duchies :

It is hereby declared, that such of the said proceeds of wreck as belong to her Majesty in right of her Crown shall, during the life of her present Majesty (whom God long preserve), be carried to and form part of the Consolidated Fund of the United Kingdom, and shall after the decease of her present Majesty (whom God long preserve) be payable and paid to her Majesty's heirs and successors :

And it is hereby further declared, that such of the said proceeds of wreck as belong to her Majesty in right of her Duchy of Lancaster shall be paid to the Receiver-General of the said duchy or his sufficient deputy or deputies as part of the revenues of the said duchy, and he dealt with accordingly :

And it is hereby further declared and enacted, that the provision in the principal Act contained regarding the sale of unclaimed wreck to which no owner establishes his claim within the period of one year, and to which no admiral, vice-admiral, lord of any manor, or person other than her Majesty, her heirs and successors, is proved to be entitled, is intended and shall be construed to apply to wreck of the sea belonging to her Majesty, her heirs and

SECTS. 1, 2. successors, in respect of the Duchy of Cornwall, or to the Duke of Cornwall for the time being in respect of his Duchy of Cornwall : but that the proceeds of such wreck shall, subject to such deductions as are in the same Act mentioned, form part of the revenues of the Duchy of Cornwall, and be dealt with accordingly.

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### 3 & 4 VICT. CAP. 65.

#### AN ACT TO IMPROVE THE PRACTICE AND EXTEND THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY OF ENGLAND.

[7th August, 1840.]

WHEREAS the jurisdiction of the High Court of Admiralty of England may be in certain respects advantageously extended, and the practice thereof improved : Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same : That it shall be lawful for the Dean of the Arches for the time being, to be assistant to and to exercise all the power, authority, and jurisdiction, and to have all the privileges and protections of the judge of the said High Court of Admiralty, with respect to all suits and proceedings in the said court, and that all such suits and proceedings, and all things relating thereto, brought or taking place before the Dean of the Arches, whether the judge of the said High Court of Admiralty be or be not at the same time sitting or transacting the business of the same court, and also during any vacancy of the office of judge of the said court, shall be of the same force and effect in all respects as if the same had been brought or had taken place before the judge himself, and all such suits and proceedings shall be entered and registered as having been brought and as having taken place before the Dean of the Arches sitting for the judge of the High Court of Admiralty.

Dean of  
Arches to  
sit for Judge  
of Court of  
Admiralty  
in certain  
cases.

Advocates,  
surrogates,  
and proctors  
of Court of  
Arches to be  
admitted in  
Court of  
Admiralty.

2. And be it declared and enacted, That all persons who now are or at any time hereafter may be entitled to practise as advocates in the Court of Arches are and shall be entitled to practise as advocates in the said High Court of Admiralty ; and that all persons who now are or hereafter may be entitled to act as surrogates or proctors in the Court of Arches shall be entitled respectively to practise and act, or to be admitted to practise and act, as the case may be, as surrogates and proctors in the said High Court

of Admiralty, according to the rules and practice, now prevailing and observed or hereafter to be made in and by the said High Court of Admiralty touching the admission and practising of advocates, surrogates and proctors in the said court respectively.

3. And be it enacted, that after the passing of this Act, whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty, or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said court, in either such case the said court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel, and to decide any suit instituted by any such person in respect of any such claims or causes of action respectively (h).

4. And be it enacted, That the said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages, or bottomry, which shall be instituted in the said court after the passing of this Act (i).

Sect. 5 is repealed by 9 & 10 Vict. c. 99.

6. And be it enacted, That the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel, or in the nature of towage, or for necessaries supplied to any foreign ship or sea-going vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered or damage received, or necessaries furnished, in respect of which such claim is made.

7. And be it enacted, That in any suit depending in the said High Court of Admiralty, the Court (if it shall think fit) may summon before it and examine or cause to be examined witnesses by word of mouth, and either before or after examination by deposition, or before a Commissioner, as herein-after mentioned ; and notes of such evidence shall be taken down in writing by the judge or Registrar, or by such other person or persons, and in such manner, as the judge of the said court shall direct.

8. And be it enacted, That the said court may, if it shall think fit, in any such suit issue one or more special commissions to some person, being an advocate of the said High Court of Admiralty of not less than seven years

Whenever a vessel shall be arrested or proceeds brought into Registry, the Court to have jurisdiction over claims of mortgagees.

Court to decide questions of title in all causes of possession, salvage, &c.

The Court, in certain cases, may adjudicate on claims for services and necessities, although not on the high seas.

Evidence may be taken *viva voce* in open Court.

Evidence may be taken *viva voce* before a Commissioner.

(h) See also 24 Vict. c. 10, s. 25.

(i) Extended by Ibid. s. 8.

Sects. 9—11. standing, or a barrister at law of not less than seven years standing, to take evidence by word of mouth, upon oath, which every such Commissioner is hereby empowered to administer, at such time or times, place or places, and as to such fact or facts, and in such manner, order, and course, and under such limitations and restrictions, and to transmit the same to the registry of the said court, in such form and manner as in and by the commission shall be directed; and that such Commissioner shall be attended, and the witnesses shall be examined, cross-examined, and re-examined by the parties, their counsel, proctors, or agents, if such parties, or either of them, shall think fit so to do; and such commission shall, if need be, make a special report to the court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the said High Court of Admiralty is hereby authorised to institute such proceedings, and make such order or orders, upon such report, as justice may require, and as may be instituted or made in any case of contempt of the said court.

Attendance  
of witnesses  
and produc-  
tion of  
papers may  
be com-  
pelled by  
subpoena.

9. And be it enacted, That it shall be lawful in any suit depending in the said Court of Admiralty, for the judge of the said court, or for any such commissioner appointed in pursuance of this Act, to require the attendance of any witnesses, and the production of any deeds, evidences, books, or writings, by writ, to be issued by such judge or commissioner in such and the same form, or as nearly as may be, as that in which a writ of subpoena ad testificandum, or of the subpoena duces tecum, is now issued by her Majesty's Court of Queen's Bench at Westmiuster; and that every person disobeying any such writ so to be issued by the said judge or Commissioner shall be considered as in contempt of the said High Court of Admiralty, and may be punished for such contempt in the said court.

Provisions  
of 3 & 4  
W. 4, c. 42,  
extended  
to Court of  
Admiralty.

10. And be it enacted, That all the provisions of an Act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the further Amendment of the Law, and better Administration of Justice," with respect to the admissibility of the evidence of witnesses interested on account of the verdict or judgment, shall extend to the admissibility of evidence in any suit pending in the said Court of Admiralty, and the entry directed by the said Act to be made on the record of judgment shall be made upon the document containing the final sentence of the said court, and shall have the like effect as the entry on such record.

Power to  
direct  
issues.

11. And be it enacted, That in any contested suit depending in the said Court of Admiralty the said court shall have power, if it shall think fit so to do, to direct a trial by jury of any issue or issues on any question or questions of fact arising in any such suit, and that the substance and

form of such issue or issues shall be specified by the judge of the said court at the time of directing the same; and if the parties differ in drawing such issue or issues, it shall be referred to the judge of the said court to settle the same; and such trial shall be had before some judge of her Majesty's superior courts of Common Law at Westminster, at the sittings at Nisi Prius in London or Middlesex, or before some judge of assize at Nisi Prius, as to the said court shall seem fit.

SECTS. 12—  
16.

12. And be it enacted, That the costs of such issues, or of such commission as aforesaid, as the judge of the said High Court of Admiralty shall under this Act direct, shall be paid by such party or parties, person or persons, and be taxed by the Registrar of the said High Court of Admiralty, in such manner as the said judge shall direct, and that payment of such costs shall be enforced in the same manner as costs between party and party may be enforced in other proceedings in the said court.

Costs of  
issues and  
commis-  
sions to be  
in the dis-  
cretion of  
the Court.

13. And be it enacted, That the said Court of Admiralty, upon application to be made within three calendar months after the trial of any such issue by any party concerned, may grant and direct one or more new trials of any such issue, and may order such new trial to take place in the manner hereinbefore directed with regard to the first trial of such issue, and may by order of the same court direct such costs to be paid as to the said court shall seem fit upon any application for a new trial, or upon any new trial, or second or other new trial, and may direct by whom and to whom and at what times and in what manner such costs shall be paid.

Power to  
direct new  
trials.

14. And be it enacted, That the granting or refusing to grant an issue, or a new trial of any such issue, may be matter of appeal to her Majesty in Council.

Granting or  
refusing  
new trial,  
matter of  
appeal.

15. And be it enacted, That at the trial of any issue directed by the said High Court of Admiralty, either party shall have all the like powers, rights and remedies with respect to bills of exceptions as parties impleaded before justices may have, by virtue of the statute made in that behalf in the thirteenth year of the reign of King Edward the First, with respect to exceptions alleged by them before such justices, or by any other statute made in the like behalf; and every such bill of exceptions, sealed with the seal of the judge or judges to whom such exceptions shall have been made, shall be annexed to the record of the trial of the said issue.

Bills of ex-  
ceptions to  
be allowed  
on trials of  
issues.

16. And be it enacted, That the record of the said issue, and of the verdict therein, shall be transmitted by the associate or other proper officer to the Registrar of the said Court of Admiralty; and the verdict of the jury upon any such issue (unless the same shall be set aside) shall be con-

Record of  
the issue to  
be trans-  
mitted to  
the Court of  
Admiralty.

SECTS. 17, 18. clusive upon the said court, and upon all such persons; and in all further proceedings in the cause in which such fact is found the said court shall assume such fact to be as found by the jury.

Provisions  
of 2 & 3 Wm.  
4, c. 92, as to  
appeals to  
apply to  
suits in  
Court of  
Admiralty  
under this  
Act.

3 & 4 Wm. 4,  
c. 41, to  
apply in  
same man-  
ner.

Certified  
notes of  
evidence  
taken may  
be admitted  
on appeal.

Power for  
Judge of  
Admiralty  
to make  
rules of  
Court.

17. And be it enacted, That every person who, if this Act had not been passed, might have appealed and made suit to her Majesty in Council against any proceeding, decree, or sentence of the said High Court of Admiralty under or by virtue of an Act passed in the third year of the reign of his late Majesty, intituled "An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to his Majesty in Council," may in like manner appeal and make suits to her Majesty in Council, against the proceedings, decrees, and sentences of the said court in all suits instituted and proceedings had in the same by virtue of the provisions of this Act, and that all the provisions of the said last-mentioned Act shall apply to all appeals and suits against the proceedings, decrees, and sentences of the said court in suits instituted and proceedings had by virtue of the provisions of this Act; and such appeals and suits shall be proceeded in in the manner and form provided by an Act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the better Administration of Justice in his Majesty's Privy Council;" and all the provisions of the said last-mentioned Act relating to appeals and suits from the High Court of Admiralty shall be applied to appeals and suits from the said court in suits instituted and proceedings had by virtue of the provisions of this Act: Provided always, that in any such appeal the notes of evidence taken as hereinbefore provided by or under the direction of the judge of the said High Court of Admiralty shall be certified by the said judge to her Majesty in Council, and shall be admitted to prove the oral evidence given in the said Court of Admiralty, and that no evidence shall be admitted on such appeal to contradict the notes of evidence so taken and certified as aforesaid, but this proviso shall not enure to prevent the judicial committee of the Privy Council from directing witnesses to be examined and re-examined upon such facts as to the committee shall seem fit, in the manner directed by the last recited Act.

18. And be it enacted, That it shall be lawful for the judge of the said High Court of Admiralty from time to time to make such rules, orders, and regulations respecting the practice and mode of proceeding of the said court, and the conduct and duties of the officers and practitioners therein, as to him shall seem fit, and from time to time to repeal or alter such rules, orders, or regulations: Provided always, that no such rules, orders, or regulations shall be

of any force or effect until the same shall have been approved by her Majesty in Council. SECTS. 19—  
24.

19. And it shall be declared and enacted, That no action shall lie against the judge of the said High Court of Admiralty for error in judgment, and that the said judge shall be entitled to and have all privileges and protections in the exercise of his jurisdiction as judge of the said court which by law appertain to the judges of her Majesty's superior courts of common law in the excrise of their several jurisdictions. Protection of the Judge of the Court of Admiralty.

20. And be it enacted, That the keeper for the time being of every common gaol or prison shall be bound to receive and take into his custody all persons who shall be committed thereunto by the said Court of Admiralty, or who shall be committed thereunto by any coroner appointed by the judge of the said Court of Admiralty, upon any inquest taken within or upon the high seas adjacent to the county or other jurisdiction to which such gaol or prison belongs ; and every keeper of any gaol or prison who shall refuse to receive into his custody any person so committed, or wilfully or carelessly suffer such person to escape and go at large without lawful warrant, shall be liable to the like penalties and consequences as if such person had been committed to his custody by any other lawful authority. Gaolers to receive prisoners committed by the Court of Admiralty or by Admiralty coroners.

21. And be it enacted, That it shall be lawful for the judge of the said High Court of Admiralty to order the discharge of any person who shall be in custody for contempt of the said court, for any cause other than for non-payment of money, on such conditions as to the judge shall seem just : Provided always, that the order for such discharge shall not be deemed to have purged the original contempt in case the conditions on which such order shall be made be not fulfilled. Prisoner in contempt may be discharged.

22. And be it enacted, That the said High Court of Admiralty shall have jurisdiction to decide all matters and questions concerning booty of war, or the distribution thereof, which it shall please her Majesty, her heirs and successors, by the advice of her and their Privy council, to refer to the judgment of the said court ; and in all matters so referred the court shall proceed as in cases of prize of war, and the judgment of the court therein shall be binding upon all parties concerned. Jurisdiction to try questions concerning booty of war.

23. Provided always, and be it enacted, That nothing herein contained shall be deemed to preclude any of her Majesty's courts of law or equity now having jurisdiction over the several subject matters and causes of action hereinbefore mentioned from continuing to exercise such jurisdiction as fully as if this Act had not been passed. Jurisdiction of Courts of Law and Equity not taken away.

24. And be it enacted, That this Act may be repealed or Act may be

SECTS. 1—6. amended by any Act to be passed in this session of Parliament.  
amended  
this Session.

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## 24 VICT. CAP. 10.

## AN ACT TO EXTEND THE JURISDICTION AND IMPROVE THE PRACTICE OF THE HIGH COURT OF ADMIRALTY.

[17th May, 1861.]

WHEREAS it is expedient to extend the jurisdiction and improve the practice of the High Court of Admiralty of England: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

## Short title.

1. This Act may be cited for all purposes as "The Admiralty Court Act, 1861."

## Interpretation of terms.

2. In the interpretation and for the purposes of this Act (if not inconsistent with the context or subject) the following terms shall have the respective meanings herein-after assigned to them; that is to say,

"Ship" shall include any description of vessel used in navigation not propelled by oars:

"Cause" shall include any cause, suit, action, or other proceeding in the Court of Admiralty.

## Commencement of Act.

3. This Act shall come into operation on the 1st day of June, one thousand eight hundred and sixty-one.

## As to claims for building, equipping, or repairing of ships.

4. The High Court of Admiralty shall have jurisdiction over any claim for the building, equipping, or repairing of any ship, if at the time of the institution of the cause the ship or the proceeds thereof are under arrest of the Court.

## As to claims for necessaries.

5. The High Court of Admiralty shall have jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales: Provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court.

## As to claims for damage to cargo imported.

6. The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignees of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the

goods or any part thereof by the negligence or misconduct SECTS. 7—12.  
of or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it is shown to the satisfaction of the court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales: Provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said court.

7. The High Court of Admiralty shall have jurisdiction As to claims for damage over any claim for damage done by any ship.

8. The High Court of Admiralty shall have jurisdiction to decide all questions arising between the co-owners, or any of them, touching the ownership, possession, employment, and earnings of any ship registered at any port in England or Wales, or any share thereof, and may settle all accounts outstanding and unsettled between the parties in relation thereto, and may direct the said ship or any share thereof to be sold, and may make such order in the premises as to it shall seem fit.

9. All the provisions of "The Merchant Shipping Act, 1854," in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any British ship or boat, wheresoever the services may have been rendered, and from any foreign ship or boat, where the services have been rendered either wholly or in part in British waters.

10. The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship: Provided always, that if in any such cause the plaintiff do not recover fifty pounds, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said court.

11. The High Court of Admiralty shall have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of "The Merchant Shipping Act, 1854," whether the ship or the proceeds thereof be under arrest of the said court or not.

12. The High Court of Admiralty shall have the same powers over any British ship, or any share therein, as are conferred upon the High Court of Chancery in England by the sixty-second, sixty-third, sixty-fourth, and sixty-fifth sections of "The Merchant Shipping Act, 1854."

As to claims for damage by any ship.

High Court of Admiralty to decide questions as to ownership, &c. of ships.

Extending 17 & 18 Vict. c. 104, as to claims for salvage of life.

As to claims for wages and for disbursements by master of a ship.

3 & 4 Vict. c. 65, in regard to mortgages extended to Court of Admiralty.

Sections 62 to 65 of 17 & 18 Vict. c. 104, extended to Court of Admiralty.

SECTS. 13—  
16.

Part IX. of  
17 & 18 Vict.  
c. 104.  
extended  
to Court of  
Admiralty.

Court to be  
a Court of  
Record.

Decrees and  
Orders of  
Court of  
Admiralty  
to have  
effect of  
judgments  
at Common  
Law.

As to claims  
to goods  
taken in  
execution.

13. Whenever any ship or vessel, or the proceeds thereof, are under arrest of the High Court of Admiralty, the said court shall have the same powers as are conferred upon the High Court of Chancery in England by the ninth part of "The Merchant Shipping Act, 1854."

14. The High Court of Admiralty shall be a court of record for all intents and purposes.

15. All decrees and orders of the High Court of Admiralty, whereby any sum of money, or any costs, charges, or expenses, shall be payable to any person, shall have the same effect as judgments in the superior courts of common law, and the persons to whom any such monies, or costs, charges, or expenses, shall be payable, shall be deemed judgment creditors, and all powers of enforcing judgments possessed by the superior courts of common law, or any judge thereof, with respect to matters depending in the same courts, as well against the ships and goods arrested as against the person of the judgment debtor, shall be possessed by the said Court of Admiralty with respect to matters therein depending; and all remedies at common law possessed by judgment creditors shall be in like manner possessed by persons to whom any monies, costs, charges, or expenses are by such orders or decrees of the said Court of Admiralty directed to be paid.

16. If any claim shall be made to any goods or chattels taken in execution under any process of the High Court of Admiralty, or in respect of the seizure thereof, or any act or matter connected therewith, or in respect of the proceeds or value of any such goods or chattels, by any landlord for rent, or by any person not being the party against whom the process has issued, the Registrar of the said court may, upon application of the officer charged with the execution of the process, whether before or after any action brought against such officer, issue a summons calling before the said court both the party issuing such process and the party making the claim, and thereupon any action which shall have been brought in any of her Majesty's superior courts of record, or in any local or inferior court, in respect of such claim, seizure, act, or matter as aforesaid, shall be stayed, and the court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after issue of the summons out of the said Admiralty Court, and the judge of the said Admiralty Court shall adjudicate upon the claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner

as any order made in any suit brought in the said court. Where any such claim shall be made as aforesaid the claimant may deposit with the officer charged with the execution of the process either the amount or value of the goods claimed, the value to be fixed by appraisement in case of dispute, to be by the officer paid into court to abide the decision of the judge upon the claim, or the sum which the officer shall be allowed to charge as costs for keeping possession of the goods until such decision can be obtained, and in default of the claimant so doing the officer may sell the goods as if no such claim had been made, and shall pay into court the proceeds of the sale, to abide the decision of the judge.

SECTS. 17—  
20.

17. The judge of the High Court of Admiralty shall have all such powers as are possessed by any of the superior courts of common law or any judge thereof to compel either party in any cause or matter to answer interrogatories, and to enforce the production, inspection, and delivery of copies of any document in his possession or power.

18. Any party in a cause in the High Court of Admiralty shall be at liberty to apply to the said court for an order for the inspection by the Trinity Masters or others appointed for the trial of the said cause, or by the party himself or his witnesses, of any ship or other personal or real property, the inspection of which may be material to the issue of the cause, and the court may make such order in respect of the costs arising thereout as to it shall seem fit.

19. Any party in a cause in the High Court of Admiralty may call on any other party in the cause by notice in writing to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable.

20. Whenever it shall be made to appear to the judge of the High Court of Admiralty that reasonable efforts have been made to effect personal service of any citation, monition, or other process issued under seal of the said court, and either that the same has come to the knowledge of the party thereby cited or mentioned, or that he wilfully evades service of the same, and has not appeared thereto, the said judge may order that the party on whose behalf the citation, monition, or other process was issued be at liberty to proceed as if personal service had been effected, subject to such conditions as to the judge may seem fit, and all proceedings thereon shall be as effectual as if personal service of such citation, monition, or other process had been effected.

SECTS. 21—  
28.

As to the  
service of  
subpoena  
out of  
England  
and Wales.

Power to  
issue new  
writs or  
other  
process.

Judge and  
Registrar  
to have  
same power  
as to arbitra-  
tion as  
Judges and  
Masters at  
Common  
Law.

Section 15 of  
17 & 18 Vict.  
c. 104.  
extended to  
Registrar of  
Court of  
Admiralty.

Powers of  
Registrar  
and of  
Deputy or  
Assistant  
Registrar.

False oath  
or affirma-  
tion deemed  
perjury.

Appoint-  
ment of Re-  
gistrar and  
of Deputy or  
Assistant  
Registrar.

Appoint-  
ment of  
examiners.

21. The service in any part of Great Britain or Ireland of any writ of subpoena ad testificandum or subpœna duces tecum, issued under seal of the High Court of Admiralty, shall be as effectual as if the same had been served in England or Wales.

22. Any new writ or other process necessary or expedient for giving effect to any of the provisions of this Act may be issued from the High Court of Admiralty in such form as the judge of the said court shall from time to time direct.

23. All the powers possessed by any of the superior courts of common law or any judge thereof, under the Common Law Procedure Act, 1854, and otherwise, with regard to referuees to arbitration, proceedings thereon, and the enforcing of awards of arbitrators, shall be possessed by the judge of the High Court of Admiralty in all causes and matters depending in the said court, and the Registrar of the said Court of Admiralty shall possess as to such matters the same powers as are possessed by the masters of the said superior courts of common law in relation thereto.

24. The Registrar of the High Court of Admiralty shall have the same powers under the fifteenth section of the Merchant Shipping Act, 1854, as are by the said section conferred on the masters of Her Majesty's Court of Queen's Bench in England and Ireland.

25. The Registrar of the High Court of Admiralty may exercise, with reference to causes and matters in the said court, the same powers as any surrogate of the judge of the said court sitting in chambers might or could have heretofore lawfully exercised ; and all powers and authorities by this or any other Act conferred upon or vested in the Registrar of the said High Court of Admiralty may be exercised by any deputy or assistant Registrar of the said Court.

26. The Registrar of the said Court of Admiralty shall have power to administer oaths in relation to any cause or matter depending in the said court ; and any person who shall wilfully depose or affirm falsely in any proceeding before the Registrar or before any deputy or assistaut Registrar of the said court, or before any persoia authorised to administer oaths in the said court, shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

27. Any advocate, barrister-at-law, proctor, attorney, or solicitor of ten years' standing may be appointed Registrar or assistant or deputy Registrar of the said court.

28. Any advocate, barrister-at-law, proctor, attorney, or solicitor may be appointed an examiner of the High Court of Admiralty.

29. Any person who shall have paid on his admission in any court as a proctor, solicitor, or attorney the full stamp duty of twenty-five pouuds, and who has been or shall hereafter be admitted a proctor, solicitor, or attorney (if in other respects entitled to be so admitted), shall be liable to no further stamp duty in respect of such subsequent admission.

SECTS. 29—  
35.

Stamp duty  
not payable  
on subse-  
quent ad-  
mission of  
proctors or  
solicitors.

30. Any proctor of the High Court of Admiralty may act as agent of any attorney or solicitor, and allow him to participate in the profits of and incident to any cause or matter depending in or connected with the said court; and nothing contained in the Act of the fifty-fifth year of the reign of King George the Third, chapter one hundred and sixty, shall be construed to extend to prevent any proctor from so doing, or to render him liable to any penalty in respect thereof.

Proctor may  
act as agent  
of solicitors.

31. The Act passed in the second year of the reign of King Henry the Fourth, intituled "A Remedy for him who is wrongfully pursued in the Court of Admiralty," is hereby repealed.

2 Hen. 4,  
c. 11, re-  
pealed.

32. Any party aggrieved by any order or decree of the judge of the said Court of Admiralty, whether made *ex parte* or otherwise, may, with the permission of the judge, appeal therefrom to her Majesty in Council, as fully and effectually as from any final decree or sentence of the said court.

Power of  
appeal in  
interlocu-  
tory mat-  
ters.

33. In any cause in the High Court of Admiralty bail may be taken to answer the judgment as well of the said court as of the Court of Appeal, and the said High Court of Admiralty may withhold the release of any property under its arrest until such bail has been given; and in any appeal from any decree or order of the High Court of Admiralty the Court of Appeal may make and enforce its order against the surety or sureties who may have signed any such bail bond in the same manner as if the bail had been given in the Court of Appeal.

Bail given  
in the Court  
of Admi-  
ralty good  
in the Court  
of Appeal.

34. The High Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence; and if in the principal cause the ship of the defendant has been arrested or security given by him to answer judgment, and in the cross cause the ship of the plaintiff cannot be arrested, and security has not been given to answer judgment therein, the court may, if it think fit, suspend the proceedings in the principal cause, until security has been given to answer judgment in the cross cause.

As to the  
hearing of  
causes and  
cross causes.

35. The jurisdiction conferred by this Act on the High

Jurisdiction  
of the Court.

SECTS. 1—3. Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam.

31 & 32 VICT. CAP. 71.

AN ACT for conferring Admiralty Jurisdiction on the County Courts. [31st July, 1868.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

**Short title.**

1. This Act may be cited as "The County Courts Admiralty Jurisdiction Act, 1868."

**Appointment of County Courts for Admiralty purposes.**

2. If at any time after the passing of this Act it appears to her Majesty in Council, on the representation of the Lord Chancellor, expedient that any county court should have admiralty jurisdiction, it shall be lawful for her Majesty, by order in council, to appoint that court to have admiralty jurisdiction accordingly, and to assign to that court as its district for admiralty purposes any part or parts of any one or more district or districts of county courts ; and the district so constituted for that court, with the parts of the sea (if any) adjacent to that district to a distance of three miles from the shore thereof, shall be deemed its district for admiralty purposes ; and accordingly the judge and all officers of the court shall have jurisdiction and authority for those purposes throughout that district, as if the same was the district of the court for all purposes ; and, from a time to be specified in each such order, this Act shall have effect in and throughout the district so constituted ; and any such order may be from time to time varied as seems expedient ; and a county court so appointed to have admiralty jurisdiction, and no other county court, shall, for the purposes of this Act, be deemed a county court having admiralty jurisdiction : Provided that no judge of a county court, except the judges of the London court, shall have jurisdiction in the city of London.

**Extent of Admiralty jurisdiction of County Courts.**

3. Any county court having admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine, subject and according to the provisions of this Act, the following causes (in this Act referred to as admiralty causes) :

(1.) As to any claim for salvage—any cause in which the value of the property saved does not exceed

one thousand pounds, or in which the amount claimed does not exceed three hundred pounds : SECTS. 4—7.

- (2.) As to any claim for towage, necessaries, or wages—any cause in which the amount claimed does not exceed one hundred and fifty pounds :
- (3.) As to any claim for damage to cargo, or damage by collision—any cause in which the amount claimed does not exceed three hundred pounds : (a)
- (4.) Any cause in respect of any such claim or claims as aforesaid, but in which the value of the property saved or the amount claimed is beyond the amount limited as above mentioned, when the parties agree by a memorandum signed by them or by their attorneys or agents that any county court having admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction.

4. Nothing in this Act, or in any order in council under it, shall confer on a county court jurisdiction in any prize cause, or in any other matter within the Naval Prize Act, 1864, or in any matter arising under any of acts for the suppression of the slave trade, or any admiralty jurisdiction by way of appeal.

5. From and after the time specified in each order in council under this Act appointing a county court to have admiralty jurisdiction within any district as the time from which this Act shall have effect in and throughout that district, no county court, other than the county court so appointed, shall have jurisdiction within that district in any admiralty cause ; provided that all admiralty causes at that time pending in any county court within that district may be continued as if no such order in council had been made.

6. The High Court of Admiralty of England, on motion by any party to an admiralty cause pending in a county court, may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the court may seem fit.

7. If during the progress of an admiralty cause in a county court it appears to the court that the subject matter exceeds the limit in respect of amount of the admiralty jurisdiction of the court, the validity of any order or decree theretofore made by the court shall not be thereby affected, but (unless the parties agree, by a memorandum signed by them or by their attorneys or agents, that the court shall retain jurisdiction,) the court shall by order transfer the cause to the High Court of Admiralty ;

(a) Extended to cases of damage, whether by collision or otherwise, by 32 & 33 Vict. c. 51, s. 4.

SECTS. 8—12. but that court may, nevertheless, if the judge of that court in any case thinks fit, order that the cause shall be prosecuted in the county court in which it was commenced, and it shall be prosecuted accordingly.

As to transfer of causes to other County Courts or Court of Admiralty.

8. If during the progress of an admiralty cause in a county court it shall appear to the court that the cause could be more conveniently prosecuted in some other county court, or in the High Court of Admiralty of England, the court may by order transfer it to such other county court, or to the High Court of Admiralty of England, as the case may be, and the cause shall thenceforward be so prosecuted accordingly.

Restrictions on proceedings in the Court of Admiralty or Superior Court.

9. If any person shall take in the High Court of Admiralty of England or in any superior court proceedings which he might, without agreement, have taken in a county court, except by order of the judge of the High Court of Admiralty or of such superior court or of a county court having admiralty jurisdiction, and shall not recover a sum exceeding the amount to which the jurisdiction of the county court in that admiralty cause is limited by this Act, and also if any person without agreement shall, except by order as aforesaid, take proceedings as to salvage in the High Court of Admiralty or in any superior court in respect of property saved, the value of which when saved does not exceed one thousand pounds, he shall not be entitled to costs, and shall be liable to be condemned in costs, unless the judge of the High Court of Admiralty or of a superior court before whom the cause is tried or heard shall certify that it was a proper admiralty cause to be tried in the High Court of Admiralty of England or in a superior court.

Powers, &c., of Judges and registrars.

10. In an admiralty cause in a county court the cause shall be heard and determined in like manner as ordinary civil causes are now heard and determined in county courts; save and except that in any admiralty cause of salvage, towage, or collision the county court judge shall, if he think fit, or on the request of either party to such cause, be assisted by two nautical assessors in the same way as the judge of the High Court of Admiralty is now assisted by nautical assessors.

Power to Judge of County Court to summon nautical assessors to his assistance. Decrees in County Courts in Admiralty.

11. In any such admiralty cause as last aforesaid it shall be lawful for the judge of the county court, if he think fit, and he shall, upon request of either party, summon to his assistance in such manner as general orders shall direct two nautical assessors, and such nautical assessors shall attend and assist accordingly.

12. The decree of the county court in an admiralty cause shall be enforced against the person or persons summoned as the defendant or defendants in the same manner as the decrees of the said court are enforced in ordinary

civil causes, save and except as in this Act otherwise SECTS 13—  
provided. 20.

13. The judge of every county court having admiralty jurisdiction shall hear and determine admiralty causes at the usual courts held within his jurisdiction, or at special courts to be held by him, and which he is hereby required to hold as soon as may be after he shall have had notice of an admiralty cause having arisen within the jurisdiction of his court.

14. The registrar of each county court having admiralty jurisdiction shall from time to time frame a list, to be approved by the judge of the High Court of Admiralty before whom the same shall be laid by the county court judge, and without whose approval it shall have no validity, of assessors, of persons of nautical skill and experience residing or having places of business within the district of the county court, to act as assessors in that court, and shall cause the list to be published in the "London Gazette."

15. Every person named in the list of assessors so framed and approved shall attend the county court under such circumstances, and in such rotation, and subject to such regulations, and shall receive such fees for his attendance, as general orders shall direct, and for every wilful non-attendance shall be liable, at the discretion of the court, to a penalty not exceeding five pounds.

16. Every assessor named in such list shall hold his office until a new list of assessors shall have been framed and approved as aforesaid, or until he shall resign his appointment.

17. The registrars of the county courts shall be remunerated for their duties in admiralty causes by receiving such fees as General Orders shall direct.

18. A scale of costs and charges in admiralty causes in the county courts shall be prescribed by General Orders.

19. The registrar of a county court shall have power to administer oaths in relation to any admiralty cause in a county court; and any person who shall wilfully depose or affirm falsely before the registrar in any admiralty cause shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

20. Evidence taken in any admiralty cause before the registrar of a county court, as the judge of a county court or General Orders shall direct, shall be received as evidence in any other county court, saving all just exceptions; and the registrar of any county court shall, for the purpose of the examination of any witnesses within the district of that court, have all and the like powers and authorities of an examiner of the High Court of Admiralty

causes to have same force as those in civil causes.  
Admiralty causes to be heard at usual courts.

Appoint-  
ment of  
assessors in  
County  
Court.

Remunera-  
tion of Re-  
gistrars.

Scale of  
costs.

Power to  
Registrars  
to admini-  
ster oaths  
and take  
evidence.

Evidence  
before Re-  
gistrar re-  
ceivable in  
Admiralty  
Court.

SECTS 21—  
23.— of England, and evidence taken by him in that capacity shall be received as evidence in the High Court of Admiralty of England, saving all just exceptions.

As to pro-  
ceedings in  
County  
Court for  
commence-  
ment of  
cause.

21. Proceedings in an admiralty cause shall be commenced—

- (1.) In the county court having admiralty jurisdiction within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings :
- (2.) If the foregoing rule be not applicable, then in the county court having admiralty jurisdiction in the district of which the owner of the vessel or property to which the cause relates, or his agent in England, resides, or if such owner or agent does not reside within any such district, then in the county court having admiralty jurisdiction the district whereof is nearest to the place where such owner or agent resides :
- (3.) If for any reason the last foregoing rule is not applicable or cannot be acted on, then in such county court having admiralty jurisdiction as General Orders direct :
- (4.) In any case in the county court or one of the county courts having admiralty jurisdiction in which the parties by a memorandum, signed by them or by their attorneys or agents, agree shall have jurisdiction in the cause.

Limitation  
of arrest.

22. In an admiralty cause in a county court if evidence be given to the satisfaction of the judge, or in his absence the registrar of the court, that it is probable that the vessel or property to which the cause relates will be removed out of the jurisdiction of the court before the plaintiff's claim is satisfied, it shall be lawful for the said judge, or in his absence for the registrar, to issue a warrant for the arrest and detention of the said vessel or property, unless or until bail to the amount of the claim made in such cause, and to the reasonable costs of the plaintiff in such cause, be entered into and perfected, according to General Orders, by or on behalf of the owner of the vessel or property or his agent, or other the defendant in such cause ; and, except as in this section expressly provided, there shall be no arrest or detention of a vessel or property in an admiralty cause in a county court otherwise than in execution.

Power to  
issue  
process.

23. For the execution of any decree or order of a county court in an admiralty cause the court may order, and the registrar on such order may seal and issue, and any officer of any county court may execute, process according to General Orders ; provided that where under such process a vessel or property would or might be sold, then, if the

owner of the vessel or property desires that the sale should be conducted in the High Court of Admiralty instead of in the county court, he shall be entitled, on security for costs being first given, and subject and according to such other provisions as General Orders direct, to obtain an order of the county court for transfer of the proceedings for sale, with or without (as the judge of the county court thinks fit) the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction and all powers and authorities relating thereto accordingly.

24. Such decrees and orders of county courts in admiralty causes as General Orders shall direct shall be registered with the registrar of county court judgments in London in such manner as General Orders shall direct.

25. The Court of Passage of the Borough of Liverpool shall, upon an order in council being made which shall appoint the County Court of Lancashire holden at Liverpool to have admiralty jurisdiction, have the like jurisdiction, powers, and authorities as by that order are conferred on the said county court; but nothing herein shall be deemed to enlarge the area over which the jurisdiction of the Court of Passage extends, or to alter the rules and regulations for holding the said court, or to take away or restrict any jurisdiction, power, or authority already vested in that court; and fees received in that court under this Act shall be dealt with as fees received in that court under its ordinary jurisdiction.

26. An appeal may be made to the High Court of Admiralty of England from a final decree or order of a county court in an admiralty cause, and, by permission of the judge of the county court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as General Orders shall direct.

27. No appeal shall be allowed unless the instrument of appeal is lodged in the registry of the High Court of Admiralty within ten days from the date of the decree or order appealed from, but the judge of the High Court of Admiralty of England may, on sufficient cause being shown to his satisfaction for such omission, allow an appeal to be prosecuted, notwithstanding that the instrument of appeal has not been lodged within that time.

28. No appeal shall be allowed if, before the decree or order is made, the parties shall have agreed by a memorandum signed by them, or by their attorneys or agents, that the decree or order shall be final; and any such agreement need not be stamped, except in respect of any fee imposed by General Orders.

SECTS. 24—  
28.

Registration  
of decrees  
and orders.

Concurrent  
jurisdiction  
of the Court  
of Passage.

Appeal to  
Court of  
Admiralty.

Agreement  
not to  
appeal.

Sects. 29—  
36.

As to  
appeals to  
the Queen  
in Council.

Costs of  
appeal.

No appeal  
unless  
amount  
exceeds 50*l.*

Conduct of  
sale, &c., in  
Court of  
Admiralty.

In certain  
cases causes  
may be  
transferred  
by County  
Court and  
appeals  
made to  
Court of  
Admiralty  
of the  
Cinque  
Ports.

County  
Court Acts  
applied to  
this.

Practice, &c.  
to be regu-  
lated by  
General  
Orders.

Authority  
for making  
General  
Orders.

29. There shall be no appeal from a decree or order of the High Court of Admiralty of England made on appeal from a county court, except by express permission of the judge of the High Court of Admiralty.

30. On an appeal under this Act, when the appellant is unsuccessful, he shall pay the costs of the appeal, unless the Appellate Court shall otherwise direct.

31. No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of fifty pounds.

32. On an appeal under this Act, the Judge of the High Court of Admiralty, if it appears to him expedient that any sale decreed or ordered to be made of the vessel or property to which the cause relates should be conducted in the High Court of Admiralty instead of in the county court from which the appeal is brought, may direct the transfer of the proceedings for sale, with or without the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction and all powers and authorities relating thereto accordingly.

33. In all cases which shall arise within the jurisdiction of the Cinque Ports as defined by the Act First and Second George the Fourth, chapter seventy-six, section eighteen, causes may be transferred by the county court and appeals made to the Court of Admiralty of the Cinque Ports in lieu of the High Court of Admiralty; and in the case of appeals the instrument of appeal shall be lodged in the registry of the Cinque Ports, and the same discretion vested in the judge official and commissary of the said Cinque Ports Court as is by this Act vested in the judge of the High Court of Admiralty.

34. This Act shall be read as one Act with so much of the County Courts Act, 1846, and the Acts amending or extending the same, as is now in force.

35. General orders shall be from time to time made under this Act for the purposes in this Act directed, and for regulating the practice and procedure of the admiralty jurisdiction of the county courts, the forms of processes and proceedings therein or issuing therefrom, and the days and places of sittings for admiralty causes, the duties of the judges and officers thereof, and the fees to be taken therein.

36. General orders under this Act shall be made by the Lord Chancellor, with the advice and assistance of the judge of the High Court of Admiralty of England, and, as far as they relate to fees, or to the receipt and expenditure of and accounting for money, with the approval of the commissioners of her Majesty's Treasury.

## 32 &amp; 33 VICT. CAP. 51.

**A**N Act to amend the County Courts (Admiralty Jurisdiction) Act, 1868, and to give Jurisdiction in certain Maritime Causes. [2nd August, 1869.

Be it enacted by the Queen's most excellent Majesty, by SECTS. 1-5. and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament A.D. 1869. assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The County Courts Admiralty Jurisdiction Amendment Act, 1869," and shall be read and interpreted as one Act with the County Courts Admiralty Jurisdiction Act, 1868. Short title.

2. Any county court appointed or to be appointed to have admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine the following causes : Extension of jurisdiction over ships and goods.

(1.) As to any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship, and also as to any claim in tort in respect of goods carried in any ship, provided the amount claimed does not exceed three hundred pounds :

(2.) As to any cause in respect of any such claim or claims as aforesaid, but in which the amount claimed is beyond the amount limited as above mentioned, when the parties agree, by a memorandum signed by them or by their attorneys or agents, that any county court having admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction. If parties agree, causes in respect of claims of higher amount may be determined by County Court.

3. The jurisdiction conferred by this Act and by the Proceedings County Courts Admiralty Jurisdiction Act, 1868, may be in rem or in exercised either by proceedings in rem or by proceedings in personam. personam.

4. The third section of the County Courts Admiralty Jurisdiction Act, 1868, shall extend and apply to all claims for damage to ships, whether by collision or otherwise, when the amount claimed does not exceed three hundred pounds. Amendment of sec. 3 f. 31 & 32 Vict. c. 71.

5. In any admiralty or maritime cause the judge may, As to appointment of mercantile assessors. if he think fit, or on the request of either party, be assisted by two mercantile assessors ; and all the provisions of the County Courts Admiralty Jurisdiction Act, 1868, with reference to nautical assessors, shall apply to the appointment, approval, summoning, and remuneration of such mercantile assessors.

SECTS. 6, 7. 6. The assessor of the Court of Passage of the borough of Liverpool shall have power from time to time to make general rules and orders for regulating the practice and procedure of the admiralty and maritime jurisdiction in the said court, and for other purposes mentioned in section thirty-five of the County Courts Admiralty Jurisdiction Act, 1868 : and any general rules and orders already made or hereafter to be made by the said assessor for any of the purposes aforesaid shall be of full force and effect as if the same had been made under this or the aforesaid Act.

Commencement of Act. 7. This Act shall come into operation on the first day of September one thousand eight hundred and sixty-nine.

### COUNTY COURTS ADMIRALTY JURISDICTION.

THE following order has been issued by the Privy Council :—

Dec. 9, 1868.—Whereas by the County Courts Admiralty Jurisdiction Act, 1868, it is, among other things, enacted, that if at any time after the passing of that Act it appears to her Majesty in Council, on the representation of the Lord Chancellor, expedient that any county court should have admiralty jurisdiction, it shall be lawful for her Majesty, by order in council, to appoint that court to have admiralty jurisdiction accordingly, and to assign to that court as its district for admiralty purposes any part or parts of any one or more district or districts of county courts.

And whereas a representation has been made by the Lord Chancellor, stating that the county courts, mentioned in the first column of the schedule hereto annexed, marked A, should have admiralty jurisdiction ; and that such courts should have assigned to them as their respective districts for admiralty purposes the districts of the county courts, the names of which are printed in the second column of the said schedule, opposite to the names of the said courts respectively.

Now, therefore, her Majesty having taken the said representation into consideration, by and with the advice of her Privy Council, is pleased to order and appoint, and it is hereby ordered and appointed, that from and after the 31st day of January, 1869, the county courts mentioned in the first column of the schedule hereto annexed, marked A, shall have admiralty jurisdiction. And her Majesty is further pleased, by and with the advice aforesaid, to assign to the courts hereby appointed to have admiralty jurisdiction, as their respective districts for admiralty purposes, the districts of the county courts, the names of which are

printed in the second column of the said schedule, opposite to the names of the said courts respectively.

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Jan. 14, 1869.—The following further order has been issued by the Privy Council :—

Whereas by the County Courts Admiralty Jurisdiction Act, 1868, it is, among other things, enacted, that if at any time after the passing of that Act it appears to her Majesty in Council, on the representation of the Lord Chancellor, expedient that any county court should have admiralty jurisdiction, it shall be lawful for her Majesty, by order in council, to appoint that court to have admiralty jurisdiction accordingly, and to assign to that court as its district for admiralty purposes any part or parts of any one or more district or districts of county courts: and further, that any such order may be from time to time varied as seems expedient:

And whereas her Majesty was pleased, by an order in council of the 9th day of December, 1868, to order that certain county courts should have admiralty jurisdiction:

And whereas a representation has been made by the Lord Chancellor, stating that it is expedient that the said order should be varied, and that the county courts mentioned in the first column of the schedule hereto annexed, marked A, should have admiralty jurisdiction; and that such courts should have assigned to them as their respective districts for admiralty purposes the districts of the county courts, the names of which are printed in the second column of the said schedule, opposite to the names of the said courts respectively:

Now, therefore, her Majesty having taken the said representation into consideration, is pleased, by and with the advice of her Privy Council, to order and appoint, and it is hereby ordered and appointed, that from and after the 31st day of January, 1869, the county courts mentioned in the first column of the schedule hereto annexed, marked A, shall have admiralty jurisdiction. And her Majesty is further pleased, by and with the advice aforesaid, to assign to the courts hereby appointed to have admiralty jurisdiction, as their respective districts for admiralty purposes, the districts of the county courts, the names of which are printed in the second column of the said schedule, opposite to the names of the said courts respectively. And her Majesty is further pleased, by and with the advice aforesaid, to order that the said order of the 9th day of December last shall be varied or rescinded, so far as it varies from this order.

## SCHEDULE A.

Name of the Court appointed to have Admiralty Jurisdiction.	The Districts of County Courts which are to be, for Admiralty Purposes, the District of the Court, the name of which is printed in the first column.
The County Court of Northumberland holden at Newcastle-upon-Tyne.	The County Court of Northumberland holden at Berwick, Belford, Alnwick, Morpeth, North Shields, and Newcastle-on-Tyne, and the County Court of Durham, holden at Gateshead and South Shields.
The County Court of Durham holden at Sunderland.	The County Court of Durham holden at Sunderland and Seaham.
The County Court of Durham holden at Stockton and Middlesborough.	The County Court of Durham holden at Hartlepool, Stockton, and Middlesborough; the County Court of Yorkshire holden at Stokesley and Whitby.
The County Court of York holden at Hull.	The County Court of Yorkshire holden at Scarborough, Bridlington, Beverley, Hedon, Hull, Howden, and Goole.
The County Court of Lincolnshire holden at Great Grimsby.	The County Court of Lincolnshire holden at Brigg, Great Grimsby, Louth, and Barton-on-Humber.
The County Court of Lincolnshire holden at Boston.	The County Court of Lincolnshire holden at Spilsby, Boston, Spalding, and Holbeach.
The County Court of Norfolk holden at King's Lynn	The County Court of Cambridgeshire holden at Wisbeach; the County Court of Norfolk holden at King's Lynn and Little Walsingham.
The County Court of Norfolk holden at Yarmouth	The County Court of Norfolk holden at Holt, North Walsham, Great Yarmouth, and Norwich.
The County Court of Suffolk holden at Lowestoft	The County Court of Suffolk holden at Beccles, Lowestoft, and Halesworth.
The County Court of Suffolk holden at Ipswich	The County Court of Suffolk holden at Framlingham, Woodbridge, and Ipswich; the County Court of Essex holden at Harwich.
The County Court of Essex holden at Colchester	The County Court of Essex holden at Colchester and Maldon.

Name of the Court appointed to have Admiralty Jurisdiction.	The Districts of County Courts which are to be, for Admiralty Purposes, the District of the Court, the name of which is printed in the First Column.
The City of London Court	The County Court of Essex holden at Rochford, Borewood, and Romford; the County Court of Kent holden at Dartford, Gravesend, Greenwich, and Woolwich; the Southwark County Court of Surrey; the Bow County Court of Middlesex; the Whitechapel County Court of Middlesex; and the City of London Court.
The County Court of Kent holden at Rochester	The County Court of Kent holden at Rochester, Sheerness, Sittingbourne, and Faversham.
The County Court of Kent holden at Ramsgate	The County Court of Kent holden at Canterbury, Margate, Ramsgate, Sandwich, and Deal.
The County Court of Kent holden at Dover	The County Court of Kent holden at Dover, Folkestone, Hythe, and Romney; the County Court of Sussex holden at Rye.
The County Court of Sussex holden at Brighton	The County Court of Sussex holden at Hastings, Lewes, Brighton, Worthing, Arundel, and Chichester.
The County Court of Hampshire holden at Portsmouth	The County Court of Hampshire holden at Portsmouth and Newport, Isle of Wight.
The County Court of Hampshire holden at Southampton	The County Court of Hampshire holden at Southampton and Lymington.
The County Court of Dorsetshire holden at Poole	The County Court of Hampshire holden at Christchurch; the County Court of Dorsetshire holden at Poole and Wareham.
The County Court of Dorsetshire holden at Dorchester	The County Court of Dorsetshire holden at Dorchester, Weymouth, and Bridport.
The County Court of Devonshire holden at Exeter	The County Court of Devonshire holden at Axminster, Honiton, Exeter, and Newton Abbot.
The County Court of Devonshire holden at Totnes and Churston Ferrers	The County Court of Devonshire holden at Totnes, Churston Ferrers, and Kingsbridge.
The County Court of Devonshire holden at East Stonehouse	The County Court of Devonshire holden at East Stonehouse and Tavistock; the County Court of Cornwall holden at Liskeard.

Name of the Court appointed to have Admiralty Jurisdiction.	The Districts of County Courts which are to be, for Admiralty Purposes, the District of the Court, the name of which is printed in the First Column.
The County Court of Cornwall holden at Truro	The County Court of Cornwall holden at Bodmin, St. Austell, Truro, Falmouth, Helston, Penzance, Redruth, St. Columb Major, and Camelford.
The County Court of Devonshire holden at Barnstaple	The County Court of Devonshire holden at Holsworthy, Bideford, and Barnstaple.
The County Court of Somersetshire holden at Bridgewater	The County Court of Somersetshire holden at Williton, Bridgewater, and Weston-super-Mare.
The County Court of Gloucestershire holden at Bristol	The County Court of Gloucestershire holden at Bristol and Thornbury.
The County Court of Gloucestershire holden at Gloucester	The County Court of Gloucestershire holden at Dursley, Gloucester, and Newnham.
The County Court of Monmouthshire holden at Newport	The County Court of Monmouthshire holden at Chepstow and Newport.
The County Court of Glamorganshire holden at Cardiff	The County Court of Glamorgan holden at Cardiff, Bridgend, and Cowbridge.
The County Court of Glamorganshire holden at Swansea	The County Court of Glamorgan holden at Neath and Swansea; the County Court of Carmarthenshire holden at Llanelli.
The County Court of Carmarthenshire holden at Carmarthen	The County Court of Carmarthenshire holden at Carmarthen and Newcastle-in-Emlyn; the County Court of Pembrokeshire holden at Narberth, Pembroke, and Haverfordwest; the County Court of Cardiganshire holden at Cardigan and Aberayron.
The County Court of Carnarvonshire holden at Bangor	The County Court of Cardiganshire holden at Aberystwith; the County Court of Montgomeryshire holden at Machynlleth; the County Court of Merionethshire holden at Dolgelly; the County Court of Carnarvonshire holden at Portmadoc, Pwllheli, Carnarvon, Bangor, and Conway; the County Court of Anglesea holden at Llangefni and Holyhead; the County Court of Flintshire holden at St. Asaph, Rhyl, Holywell, and Mold.

Name of the Court appointed to have Admiralty Jurisdiction	The Districts of County Courts which are to be, for Admiralty Purposes, the District of the Court, the name of which is printed in the First Column.
The County Court of Lancashire holden at Liverpool	The County Court of Cheshire holden at Chester, Birkenhead, and Runcorn; the County Court of Lancashire holden at Warrington, St. Helen's, Liverpool, and Ormskirk.
The County Court of Lancashire holden at Preston	The County Court of Lancashire holden at Preston, Kirkham, Poulton-le-Fylde, Garstang, Lancaster, and Ulverstone.
The County Court of Cumberland holden at Whitehaven	The County Court of Cumberland holden at Whitehaven, Cockermouth, Wigton, and Carlisle.

## FORMS.

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**No. 1.—Præcipe to institute a Cause.**

— In the High Court of Admiralty of England.

The [state title of cause], master.

No. I, A. B., proctor, hereby institute a cause of [state the nature of the cause] on behalf of [state name, address, and description of plaintiff], against [if in rem, state the name and nature of the property proceeded against; if in personam, state name, address, and description of party to be cited], in the sum of [state sum in letters] pounds. And I consent that all instruments and other documents in the said cause may be left for me at [state address required by Rule No. 7].

Dated the      day of      18 .

[To be signed by the proctor, or by his clerk for him.]

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**No. 4.—Præcipe for Warrant.**

— In the High Court of Admiralty of England.

The [state title of cause], master.

No. I, A. B., proctor for the plaintiff, pray a warrant to arrest [state name and nature of property].

Dated the      day of      18 .

[To be signed by the proctor, or by his clerk for him.]

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**No. 6.—Præcipe for Service of Warrant by the Marshal.**

— In the High Court of Admiralty of England.

The [state title of cause], master.

No. I, A. B., proctor for the plaintiff, pray that the warrant herewith left be duly served on the [state name and nature of the property to be arrested], now lying [state where situate].

Dated the      day of      18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 7.—Præcipe for Detainer.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, A. B., proctor for the plaintiff, pray a detainer against [state name and nature of property].

No.

Dated the day of 18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 9.—Præcipe for Citation in Rem.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, A. B., proctor for the plaintiff, pray a citation against all persons who have, or claim to have, any right, title, or interest in [state name and nature of property].

No.

Dated the day of 18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 11.—Præcipe for Notice of Sale.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, A. B., proctor for the plaintiff, pray a notice of sale of the [state name and nature of property], now lying [state where situate] under arrest by virtue of a warrant issued from the registry of this court, which was filed on the day of 18 .

No.

[To be signed by the proctor, or by his clerk for him.]

## No. 16.—Præcipe for Citation in Personam.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, A. B., proctor for the plaintiff, pray a citation against [state name, address, and description of the party to be cited].

No.

Dated the day of 18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 19.—Præcipe to enter an Appearance in a Cause.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, A. B., proctor, hereby enter an appearance on behalf of [state name, address, and description of party] in the

No.

cause of [state nature of cause], which has been instituted in the High Court of Admiralty of England, on behalf of [state name, address, and description of plaintiff], against [state against what or whom the cause is instituted]. And I consent that all instruments and other documents in the cause may be left for me at [state address, required by Rule 36].

Dated the      day of      18 .  
 [To be signed by the proctor, or by his clerk for him.]

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### No. 20.—Præcipe for Notice of Bail.

In the High Court of Admiralty of England.

No.      The [state title of cause], master.  
 I, A. B., proctor for the [state whether plaintiff or defendant], tender the under-mentioned persons as bail on behalf of [state the name, address, and description of the party for whom bail is to be given], in the sum of [state the sum in letters] pounds, to answer judgment in this cause [if for costs, add] so far as regards costs.

Names, Addresses, and Descriptions of Sureties.	Referees.
1.	
2.	

Dated the      day of      18 .  
 [To be signed by the proctor, or by his clerk for him.]  
 (The names of bankers should, if possible, be given as referees.)

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### No. 23.—Præcipe for Bail Bond.

In the High Court of Admiralty of England.

No.      The [state title of cause], master.  
 I, A. B., proctor for the [state whether plaintiff or defendant], pray a bail bond for the signature of the sureties named in the annexed notice of bail and report of the marshal.

Dated the      day of      18 .  
 [To be signed by the proctor, or by his clerk for him.]

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### No. 24.—Bail Bond.

In the High Court of Admiralty of England.

No.      The [state title of cause], master.  
 Whereas a cause of      has been instituted in the

High Court of Admiralty of England, on behalf of  
against (and against intervening). Now, therefore,  
we and hereby jointly and severally,  
submit ourselves to the jurisdiction of the said court, and  
consent that, if he the said shall not pay what may  
be adjudged against him in the said cause, with costs, execu-  
tion may issue forth against us, our heirs, executors,  
and administrators, goods and chattels, for a sum not ex-  
ceeding pounds.

[Signature of sureties.]

This bail bond was signed by the  
said and the sure- }  
ties, the day of  
18 . }

Before me

[To be signed before the registrar, or one of the clerks in the  
registry, or before a commissioner.]

### No. 25.—Præcipe for Commission to take Bail.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, A. B., proctor for the [state whether plaintiff or defendant], pray a commission to take bail on behalf of [state name, address, and description of the person for whom bail is to be given], in the sum of [state the sum in letters], pounds, to answer judgment in this cause (if for costs, add, so far as regards costs); the said commission to be addressed to

Dated the day of 18 .

[To be signed by the proctor, or by his clerk for him.]

### No. 28.—Affidavit of Justification.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, [state name, address, and description], one of the proposed sureties for [state name, address, and description of the person for whom bail is to be given], make oath and say, that I am worth more than the sum of [state the sum in letters in which bail is to be given], pounds after the payment of all my debts.

On the day of 18  
the said was duly }  
sworn to the truth of this } Signature of surety.  
affidavit, at

Before me,  
, Commissioner.

## No. 29.—Præcipe for Release.

In the High Court of Admiralty of England.

No.

The [state title of cause], master.

I, A. B., proctor for the [state whether plaintiff or defendant], in a cause of [state nature of cause], instituted on behalf of [state name and nature of property], now under arrest by virtue of a warrant issued from the registry of this court, pray a release of the said [bail having been given, or the cause having been withdrawn by me before an appearance was entered therein, &c., as the case may be], and there being no caveat against the release thereof outstanding.

Dated the day of 18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 31.—Præcipe for Caveat Release.

In the High Court of Admiralty of England.

No.

The [state title of cause], master.

I, A. B., proctor for the plaintiff in a cause of [state nature of cause], instituted in behalf of [state name, address, and description of plaintiff], against [state name and nature of property], pray a caveat against the release of the said [state name and nature of property].

Dated the day of 18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 32.—Præcipe for Caveat Warrant.

In the High Court of Admiralty of England.

No.

The [state title of cause], master.

I, [state name, address, and description], hereby undertake to enter an appearance in any cause that may be instituted in the High Court of Admiralty of England, against [state name and nature of the property], and within three days after I shall have been served with a notice of the institution of any such cause, to give bail therein in a sum not exceeding [state amount for which the undertaking is given] pounds, or to pay such sum into the registry. And I consent that all instruments and other documents in such cause may be left for me at [state address required by Rule No. 36].

Dated the day of 18 .

[To be signed by the party, or by his proctor.]

## No. 33.—Petition.

In the High Court of Admiralty of England.

The [state title of cause], master.

A. B., proctor for the plaintiff in a cause of [state nature of cause], instituted on behalf of [state name, address, and description of plaintiff], against [state name and nature of property], and against \_\_\_\_\_ intervening, says as follows : [here make the necessary statements in short paragraphs, numbered consecutively].

No.

And the said A. B. prays [here state the plaintiff's prayer].

Dated the      day of      18 .

[To be signed by the counsel and proctor.]

## No. 34.—Answer.

In the High Court of Admiralty of England.

The [state title of cause], master.

C. D., proctor for [state, name, address, and description], the defendant in this cause, says as follows : [here make the necessary statements, in short paragraphs, numbered consecutively].

No.

And the said C. D. prays [here state the prayer of the defendant].

Dated the      day of      18 .

[To be signed by the counsel and proctor.]

## No. 35.—Reply or any Subsequent Pleading.

In the High Court of Admiralty of England.

The [state title of cause], master.

A. B., proctor for the [state whether plaintiff or defendant], further says as follows : [here make the necessary statements, in short paragraphs, numbered consecutively].

No.

Dated the      day of      18 .

[To be signed by the counsel and proctor.]

## No. 36.—Conclusion.

In the High Court of Admiralty of England.

The [state title of cause], master.

A. B., proctor for the [state whether plaintiff or defendant], says, that he does not plead further, and prays that the pleadings be concluded.

No.

Dated the      day of      18 .

[To be signed by the counsel and proctor.]

No. 38.—Præcipe for Commission to Examine  
Witnesses.

In the High Court of Admiralty of England.

No. The [state title of cause], master.  
I, A. B., proctor for the [state whether plaintiff or defendant], pray a commission for the examination of witnesses in this cause, decreed by the judge to be opened at on the day of 18, and to be addressed to [state name of examiner or commissioner].  
[To be signed by the proctor, or by his clerk for him.]

No. 41.—Præcipe for Subpœna to appear before  
the Judge.

In the High Court of Admiralty of England.

No. The [state title of cause], master.  
I, A. B., proctor for the [state whether plaintiff or defendant], pray a subpœna, commanding to appear before the Judge of the High Court of Admiralty of England, in , situate on the day of 18, at, of the clock in the noon of the same day, to give evidence in this cause [and to produce (describe the papers to be produced, if any)].  
Dated the day of 18.  
[To be signed by the proctor, or by his clerk for him.]

No. 43.—Præcipe for Subpœna to appear before an  
Examiner or Commissioner.

In the High Court of Admiralty of England.

No. The [state title of cause], master.  
I, A. B., proctor for the [state whether plaintiff or defendant], pray a subpœna, commanding to appear before [state name], an examiner [or commissicner appointed under a commission issued from the registry] of the High Court of Admiralty of England, in , situate on the day of 18, at, of the clock in the noon of the same day, to give evidence in this cause [and to produce (describe the papers to be produced, if any)].  
Dated the day of 18.  
[To be signed by the proctor, or by his clerk for him.]

## No. 45.—Præcipe for Summons.

In the High Court of Admiralty of Eugland.

The [state title of cause], master.

I, A. B., proctor for the [state whether plaintiff or defendant] in this cause, pray a summons against [state whether defendant's or plaintiff's proctor] to appear before the judge in Chambers to show cause why [state the cause of summons].

No.

Dated the      day of      18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 47.—Minute on Filing any Document.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, A. B., proctor for the [state whether plaintiff or defendant], file the following documents ; viz. [here describe the documents].

No.

Dated the      day of      18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 48.—Præcipe for Commission of Appraisement and Sale.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, A. B., proctor for the [state whether plaintiff or defendant], pray a commission for the appraisement and sale of the [state name and nature of property], which was decreed by the Court on the      day of      18 .

No.

Dated the      day of      18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 50.—Præcipe for Order for Payment of Money out of Court.

In the High Court of Admiralty of England.

The [state title of cause], master.

I, A. B., proctor for the [state whether plaintiff or defendant], pray an order for the payment out of court to [state to whom], of the sum of [state the sum in letters], being the [state the nature of the claim] decreed to be paid to

No.

Dated the      day of      18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 52.—Præcipe for Monition to Pay.

In the High Court of Admiralty of England.

No. The [state title of cause], master.

I, A. B., proctor for the [state whether plaintiff or defendant], pray a monition against [state name, address, and description], to pay to [state name, address, and description of person to whom payment is to be made], the sum of [state the sum in letters], being [state nature of claim], decreed by order of the judge in this cause.

Dated the      day of      18 .

[To be signed by the proctor, or by his clerk for him.]

## No. 56.—Præcipe to withdraw Caveat.

In the High Court of Admiralty of England.

No. The [state title of cause], master.

I, A. B., proctor for the [state whether plaintiff or defendant], pray that the caveat against [state tenor of caveat] entered by me on the      day of      18 , on behalf of [state name], may be withdrawn.

Dated the      day of      18 .

[To be signed by the person by whom the præcipe for the entry of the caveat was signed.]

## No. 59.—Præcipe for Attachment.

In the High Court of Admiralty of England.

No. The [state title of cause], master.

I, A. B., proctor for the [state whether plaintiff or defendant], pray an attachment against [state name, address, and description], for his contumacy and contempt in (not having obeyed the monition, bearing date the      day of      18 , for payment of the sum of [state the sum in letters], which was served upon him on the      day of      18 ). The commitment indorsed on the said attachment to be addressed to [the keeper or jailor of her Majesty's jail or prison at      , as the case may be].

Dated the      day of      18 .

[To be signed by the proctor, or by his clerk for him.]

## ADDITIONAL FORMS OF PLEADINGS.

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**SUIT for Salvage by Smacks.—Anchors and Chains brought off from the shore.—Submission by Defendants to pay what Court would award.**

In the High Court of Admiralty of England.

The "Royal Standard," master.

L. & N.

T. & S.  
W. B. & W.

No.

*Petition filed on behalf of the Plaintiffs.*

L. & N. solicitors for the plaintiffs, in a cause of salvage instituted on behalf of the owners and crews of three luggers, namely, the "Ocean," of Margate, and the "Albion" and "England's Glory," of Deal, against the ship "Royal Standard," her tackle, apparel, and furniture, and the cargo now or lately laden therein, together with the freight due for the transportation thereof; and against the owners of the said vessel and her said cargo, the defendants in this cause intervening, say as follows:—

1. The "Ocean" is a lugger of 22 tons register, of the value of £600, and on the occasion hereinafter mentioned was manned with a crew of 18 hands, all told. The "Albion" is a lugger of 20 tons register, of the value of £530, and on the occasion hereinafter mentioned was manned by a crew of 14 hands, all told. The "England's Glory" is a lugger of 14 tons register, of the value of £350, and upon the occasion hereinafter mentioned was manned by a crew of 12 hands, all told.

2. The above-named ship "Royal Standard" is a full-rigged ship, of 2083 tons register, and on the occasion hereinafter mentioned was bound on a voyage from Colombo and Ceylon to London with a general cargo, consisting of cotton, coffee, cinnamon, and other valuable produce, of the estimated value of £200,000. The "Royal Standard" is double A 1 classed 20 years at Lloyds', and with her freight, was of the value of £50,000, or thereabouts.

3. The "Royal Standard" having, in prosecution of her said voyage, arrived off Dungeness and taken a pilot on board, proceeded as far as the North Foreland, off which she arrived on the 20th March, 1869, and the flood tide having ended, she was there brought to an anchor with both anchors and chains. Previously to the 20th it had been blowing very strong indeed, and the crew of the "Royal Standard" were partially knocked up with the exertion of getting the vessel up channel, and several of her men were below sick, and two others were on deck with their arms in slings.

4. The lugger "Ocean," which belongs to Margate, left that place about 1 p.m. on the said 20th day of March, in consequence of many vessels in the neighbourhood being seen to be in distress. It was then blowing a most terrific gale of wind from the N.N.E., with snow and sleet storms constantly occurring, and a very heavy sea. The "Ocean" left the harbour at half flood, and proceeded through a heavy surf for the sole purpose of rendering assistance to shipping in distress.

5. At about half-past 4 p.m. of the said day, those on board the "Ocean" saw a signal hoisted on board the "Royal Standard," which was then about 2 miles distant, and the "Ocean" immediately made the best of her way to the "Royal Standard," and in about an hour succeeded in coming up with her. She had only her fore-topmast staysail set, and, with her head in towards the land, was drifting very fast towards it without any anchor down.

6. The "Ocean," with considerable difficulty ran alongside the "Royal Standard," and four of the "Ocean's" hands, namely, W. O., H. M., G. P., and E. E., with great difficulty succeeded in boarding the "Royal Standard." The master of the "Royal Standard" then informed the said G. P. that the "Royal Standard" had lost her anchors and chains, and that he (the said master) required two more to be brought off immediately. The said master then began to talk about getting the assistance of steam tugs, when P. told him that they (the crew of the "Ocean") would render the "Royal Standard" any assistance in their power, and accordingly the pilot of the ship, her master, and P., went down in the cabin, where an order was written to Lloyd's agent at Ramsgate, to send off two anchors and chains of the size necessary for the ship. Before leaving, the said master requested P. to leave the three men who, in addition to himself, had boarded the ship, on board her to assist her crew, and P. then got into the "Ocean," and the "Ocean" proceeded to Ramsgate, leaving such three men on board the ship.

7. The "Royal Standard" succeeded in obtaining the

assistance of two steam tugs, which made fast to her. The said three hands of the "Ocean," who remained on board the "Royal Standard," as aforesaid, were requested to perform, and actually performed, the following services whilst on board her:—W. O. relieved the helm, and when not at the helm, was at the lead, constantly heaving it. E. was stationed on the look-out all the time, no other of the ship's crew being with him, and the other man was alternately supplying O.'s place at the helm or the lead, and also assisting in loosing the topsail and other things on board the vessel. In this way the "Royal Standard" proceeded through the Downs, and subsequently arrived off Dover in tow of the tugs, which, having got her into Dover Roads, there held her, one being on the port, and the other on the starboard bow.

8. The "Ocean," on leaving the ship as aforesaid, proceeded to Ramsgate, and arrived there at about 7 p.m. The wind being right out, there was great difficulty in making for the entrance to the harbour, and extra assistance was required for the purpose, and in entering the harbour, damage was done to the lugger by her striking against the Pier Head. Those belonging to the "Ocean" took the letter to Lloyd's agent, and the result of inquiries made by him and them was, that there was only one anchor in Ramsgate of sufficient size for the "Royal Standard," and that there was not any chain cable of sufficient length and size in Ramsgate. The telegraph was, therefore, set to work, and it was ascertained that there was a chain cable at Margate of sufficient size for the ship, and it was, therefore, brought over by land from Margate to Ramsgate at once, and it being ascertained by telegraph that there was one anchor and chain, and only one, of sufficient size in Deal, such anchor and chain were also ordered to be got ready, and the said G. P., and two others of the crew of the "Ocean," proceeded in a fly in the night over land from Ramsgate to Deal, for the purpose of getting all things ready to take such lastingly-mentioned anchor and chain off to the ship.

9. The chain from Margate having arrived, the said first-mentioned anchor and 60 fathoms of 2-inch chain, which together weighed 13 tons, were put on board the "Ocean," and at 1 a.m., on the 21st, the "Ocean" put to sea (the gale still continuing) for the purpose of proceeding with such anchor and chain to the ship.

10. At this time there was a heavy fall of sleet and snow, and a tremendous sea running, which necessitated the use of the pumps on board the "Ocean" to keep her free. The "Ocean" did not find the ship in the Downs, as was expected, and she then proceeded round the South Foreland to Dover Roads, and, at a little after four in the

morning, those on board the "Ocean" saw the "Royal Standard," and they at once proceeded towards her, and hailed her to get ready for the lugger to come alongside. They were then requested to lie as near to the ship as possible, which they did, and at about 6 a.m., with great difficulty and personal risk, owing chiefly to the weight of the anchor and chain, and with damage to the lugger, succeeded in delivering the anchor and 60 fathoms of chain on board the vessel. In order to get such anchor and chain on board the ship, the "Ocean" had to put seven more of her hands on board the ship to assist. The "Ocean" got clear of the ship at 11 a.m., and with the gale still continuing, proceeded for Ramsgate for the remaining part of the chain, which had been too much for the lugger to bring off at one trip. The said three men who had been put on board the ship as aforesaid were still left on board her. The "Ocean" arrived at Ramsgate at 7 p.m., and took the remainder of the chain on board, and then proceeded therewith to the ship, which she reached at about 6 a.m. on the morning of the 22nd.

11. The "Ocean" then went alongside the ship, and found her brought up with the anchor and chain, which she (the "Ocean") had taken to her on the preceding day. The crew of the "Ocean" then put the remaining part of the chain on board the ship, and were then requested to lie by the ship all day until the weather should moderate, which they did, and in the evening, the weather having moderated, the "Ocean" left her and arrived at Ramsgate at 10 p.m. (on the 22nd).

12. The said G. P. and his two companions, who left Ramsgate for Deal as aforesaid, arrived at Deal at 10 p.m. of the 20th, and got the largest luggers there, namely, the "Albion" and "England's Glory," ready; and having obtained the assistance of a number of men, succeeded in putting the anchor on board one and the chain on board the other of the said luggers, the said anchor and chain together weighing 14½ tons; and at 6 a.m. of the 21st they made preparations for launching. The wind and sea increasing, and the weather being very bad indeed, great difficulty and danger were experienced in launching the "Albion," which was laden with the anchor, the lower woodsmen being up to their waists in the surf in endeavouring to launch her, and in launching her serious damage was done to her.

13. The "Albion" having been launched, proceeded in search of the ship, both her pumps being kept constantly going. She proceeded round the South Foreland, and when off Dover observed the ship and proceeded to her, arriving by her at about 8 a.m.; and then, with great difficulty, a part of the "Albion's" crew, nine in number,

boarded the ship, and assisted in getting the anchor and chain on board the ship over her bows, it being got in over the bows owing to the position of the ship, and to other vessels being in proximity to her, so that it might be immediately ready for use.

14. The same difficulty and danger were experienced in launching the "England's Glory," which was loaded with the chain, and she also was damaged. She proceeded with the chain to the ship, and having put six of her men on board the ship to assist, the said chain was, at about 2 p.m., got on board; and the said anchor which had been put on board by the "Albion," was then let go, and the "Royal Standard" being then in safety, the said two tugs cast off from her. The "England's Glory" then returned to Deal, where she arrived at about 9 p.m.

15. At the time of the said services, the "Royal Standard" having lost her anchors and chains, and being in the situation aforesaid, was, with her cargo, in a position of very considerable danger, and the services of the plaintiffs, which were promptly and efficiently rendered by them, were of great value to the "Royal Standard" and her cargo.

16. In rendering the said services, considerable personal risk was incurred by the plaintiffs, and the said luggers ran great risk of being stove in and lost, and in rendering such services the said luggers respectively were actually damaged to the amounts following (that is to say), the "Ocean" to the amount of £10 2s. 10d., the "England's Glory" to the amount of £2 13s. 6d., and the "Albion" to the amount of £5 8s. The plaintiffs also in rendering such services incurred expenses amounting to the sum of £8 16s.

And the said L. and N. pray the Right Honourable the Judge to award to the plaintiffs, in respect of their said services, such an amount of salvage as to him may seem just, and to condemn the defendants and their bail therein and in costs, and that further and otherwise right and justice may be administered to the plaintiffs in the premises.

Dated the day of .

L. & N.

E. C. C.

*Answer of the Defendants, the Owners of the Ship and Freight.*

T. & S., proctors for the owners of the vessel "Royal Standard," her tackle, apparel, and furniture, and of the freight due for the transportation of the cargo now or lately laden therein, in answer to the petition filed in this cause, say as follows—

1. The "Royal Standard" is a full rigged ship of 2083 tons register. On the 9th of November, 1868, being stout, staunch, and strong, and in every way fitted for the voyage, and manued by a crew of 42 hands, all told, she left Colombo laden with a general cargo bound for the port of London.

2. During the prosecution of her said voyage, the "Royal Standard" met with strong gales and bad weather, but sustained no damage beyond having some of her sails split, which were, however, put in good order before she arrived off Dungeness.

3. About 7 p.m. of the 19th of March the "Royal Standard" arrived off Dungeness, and her master engaged the steam-tug "Albion" to tow her to London. The weather was then and had been for some days before fine, the wind blowing light from the south.

4. About 10 p.m. of the same day the "Royal Standard," in tow of the "Albion," arrived off Dover, where she took on board a pilot, and under his charge proceeded on her voyage, the wind blowing fresh from the north.

5. Early in the morning of the next day, the 20th of March, the "Royal Standard," in tow as aforesaid, arrived off the North Foreland, when the wind suddenly increased to a heavy gale from the north, and the steam-tug being unable to hold the ship, was obliged to cast off and put into Margate. Before, however, the tug left the ship, it was arranged between the master of the ship and the master of the tug, that when the wind moderated the tug should, upon an agreed signal being hoisted, return and take the "Royal Standard" again in tow.

6. Upon the tug leaving the "Royal Standard" as aforesaid, she was, at about 8 a.m. of the said day, by order of the pilot, brought to anchor, and so remained until about 4 p.m., when a gust of wind struck the ship, causing first the starboard chain and then the port chain to give way. The ship then began to drift towards the shore, from which she was then about five miles distant, but the chain that remained being slipped from the hawse, her head was brought round before the wind, and under her foretop sail and foretop mast staysail she ran free before the wind through the Downs.

7. On the chains so giving way as aforesaid, the "Royal Standard" hoisted the agreed signal for the return of the tug to the ship.

8. At about 5 p.m., while the ship was running before the wind as aforesaid, a lugger, which proved to be the "Ocean," came alongside of her, and it was arranged between the master of the "Royal Standard" and the master of the "Ocean" that the ship should proceed to Dover Wick, and that her master, being provided by the

master of the "Royal Standard" with a letter to Lloyd's agent at Ramsgate, should proceed there with the lugger, and procure fresh anchors and chains, and ship them on board the "Royal Standard" when she arrived off Dover.

9. After the lugger had left for Ramsgate, the master of the "Royal Standard" found that three of the lugger's crew had remained on board his ship, but they did so entirely of their own accord, and without any request or authority of the master, and were not required to render any assistance in working the said ship, except that one of them was for some time heaving the lead.

10. About the time the "Ocean" was alongside the "Royal Standard" as aforesaid, a steam-vessel called the "Wanderer," came up, and it was arranged between the master of the "Wanderer" and the master of the ship that the "Wanderer" should, for a sum of £60, hold the ship whilst fresh anchors and chains were being procured, and should afterwards assist the "Albion" in towing her to London.

11. Shortly afterwards the "Albion" came up, and the "Royal Standard" accordingly proceeded in tow of the "Wanderer" and the "Albion" to Dover Wick, where she was held by them until the following morning.

12. About 6 a.m. on that morning, the 21st of March, while the "Royal Standard" was being held close under the headland in Dover Road by the "Albion" and the "Wanderer," the weather having then moderated, the "Ocean" came alongside, and an anchor and some chain was shipped from her on board of the "Royal Standard," without any damage or risk to the "Ocean" or her crew.

13. Afterwards, on the same morning, the lugger "Albion" and the lugger "England's Glory," came up with another anchor and chain to the "Royal Standard." This anchor and chain was shipped on board of the "Royal Standard," without any damage or risk to the "Albion" or the "England's Glory," or either of their crews.

14. After the "Royal Standard" had so taken on board as aforesaid the said anchors and chain, she was towed by the steam-tugs "Albion" and "Wanderer" into the outer Dover Roads, where she came to anchor, with the anchor and 75 fathoms of the chain which had been brought to her as aforesaid by the "Ocean."

15. About 6 a.m. on the morning of the following day, the 22nd of March, and while the "Royal Standard" was so at anchor as aforesaid in the outer Dover Roads, the "Ocean" returned to her with more chain. The weather had then moderated, the sea had gone down, and the ship was in a sheltered position, and the chain was shipped on

board of the "Royal Standard," without any difficulty or danger to the "Ocean" or her crew.

16. The "Royal Standard" remained safely at anchor as aforesaid until the 23rd of March, being detained by gales from the north and north-east, when she weighed anchor, and in tow of the "Albion" and the "Wanderer" proceeded on her voyage, and about 6.30 p.m. of the 24th of March arrived off Gravesend, and was there moored.

17. The "Royal Standard" never was in any danger from the loss of her two anchors and chains, as hereinbefore mentioned. Moreover there were on board of her, at the time when she so broke away as aforesaid, two other anchors, one of which was as large, and the other nearly as large, as those lost, and she had also on board about 105 fathoms of chain.

18. The only services rendered by the three luggers consisted in their having brought the aforesaid anchors and chains on board the ship, and of these anchors and chains; and, moreover, the "Royal Standard" only made use of the anchor and chain brought by the "Ocean."

19. Save as hereinbefore admitted all the several averments contained in the said petition are untrue.

Wherefore the said proctors pray the Right Honourable the Judge to award the plaintiffs such sum as to his lordship may seem fit, and that otherwise justice may be done in the premises.

Dated the      day of      ,      .  
A. C.

T. & S.

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*Answer of the Defendants, the Owners of the Cargo.*

W., B., and W., solicitors for the owners of the cargo lately laden on board the ship or vessel "Royal Standard," defendants in this cause say—

That they repeat the averments in the answer filed on behalf of the owners of the said ship, "Royal Standard," in this cause, and pray the Right Honourable the Judge to pronounce such a moderate sum to be due to the plaintiffs for their services to the said cargo as to him shall seem meet.

Dated the      day of      , in the year of our Lord  
W., B. & W.  
O. L.

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*Conclusion filed on behalf of the Plaintiffs.*

L. and N., solicitors for the plaintiffs, further say as follows—

1. They deny the statements contained in the answers

of all the defendants, so far as the same are inconsistent with the allegations made by the petition, and pray that the pleadings may be concluded.

Dated this      day of

L. & N.

E. C. C.

**PLEADING** in a Suit for Salvage by Smacks in getting vessel off sands for an agreed sum.—Defence, that sum claimed exorbitant, and tender of reasonable amount.

**In the High Court of Admiralty of England.**

The "Rose," master.

No

*Petition filed on behalf of the Plaintiffs.*

L. & N., solicitors for the plaintiffs in a cause of Salvage, instituted on behalf of the owners, masters, and crews of the smacks "Deerhound," "Sea Lark," "Beulah," "Active," "Lizzie Mordew," "Scout," and "Increase," against the ship or vessel "Rose," her tackle, apparel, and furniture, and the cargo now or lately laden therein; together with the freight due for the transportation thereof; and against the owners of the ship or vessel "Rose," Messieurs L. G. B. & Co., the owners of part of the said cargo, and J. B., the owner of other part of the said cargo, the defendants in this cause intervening, say as follows:—

1. On the 2nd day of June, 1869, the smack "Deerhound," of Colchester, was cruising, on the look-out for pilots, and also with the object of assisting vessels, when at about 4 a.m. a vessel was observed on the Gunfleet Sands, with her head to the E.N.E. She appeared to be a brig of over 250 tons burthen, and afterwards proved to be the "Rose," the vessel proceeded against in this cause. She was laden with a cargo of deals and iron, bound from Gefle, in Sweden, to London. The wind at this time was blowing a gentle breeze from W. by S., and the sea was comparatively smooth.

2. As soon as the "Rose" was observed, the "Deerhound" made for her, and offered assistance, but this the master of the "Rose" refused, and he and his crew tried to get her off the sand by carrying her kedge anchor out, and then heaving upon it by the windlass.

3. Although it was high water at this time, and the

master of the "Rose" and his crew used every exertion, they could not succeed in moving the vessel.

4. Seeing this to be the case, and knowing that each successive tide would be lower than the one preceding, as the tides were then taking off, the master of the "Deerhound" remained as near to the brig as possible, and on the ebb tide, the six other smacks, whose owners and crews are proceeding in this cause, also came up to the "Rose," and stayed by her, with a view to rendering assistance in case of need.

5. The master of the "Rose" used his utmost endeavours to get his vessel off during the three tides following the arrival of the "Deerhound," and not succeeding at the third time of high-water, he offered to make an agreement with the master of the "Deerhound" for assistance; but not being able to agree upon the terms upon which such assistance should be rendered, the master of the "Rose," and his crew, commenced to throw the deck cargo (consisting of deals) overboard in order to lighten the ship, but notwithstanding this they were unable to move her.

6. Finding that all his efforts to get the ship off were unsuccessful, the master of the "Rose" offered to make an agreement for assistance, but this the plaintiffs refused, expressing their readiness however to render assistance, and to have the amount of their remuneration settled on shore.

7. The master of the "Rose" having again tried to get the ship off at high-water, on Thursday the 3rd of June, and being unable to do so, asked O. L., the master of the "Deerhound," what he would get the brig off for; and the said O. L. again replied that he would rather have the matter settled on shore.

8. It was then getting on for the fourth time of high-water, and the wind had come round to the S.S.W., from which quarter it was blowing strongly, and on to the sand. The tides were still decreasing in height, and the "Rose" was straining with every tide, so much so that she was now making 11 or 12 inches of water per hour. She also had a strong list at each low water.

9. Under these circumstances, the master of the "Rose" became very anxious to get his ship off the sand; and, after stating that he was bound to make an agreement according to the rules of his club, inquired what sum the plaintiffs would get the ship off for. The seven masters of the various smacks then went down into the cabin of the brig, and, after discussing the matter, offered to get the ship off for £450. The master of the "Rose" would not consent to pay this sum, but offered £300, which the plaintiffs refused, and the masters of the smacks thereupon

left the brig's cabin, and came on deck. The master of the "Rose" came again to the masters of the smacks, who, having consulted together, told him that £400 was the lowest sum they could accept. After some further discussion, the plaintiffs agreed to accept £390, and for this to run the risk of bringing one of the smacks up close on to the sand, and using her windlass, as well as that of the ship, in their endeavours to get her off.

10. This sum of £390 the master of the "Rose" at last agreed to pay, and he himself wrote out an agreement to that effect, in duplicate, which was signed by all parties. The following is a copy of such agreement :—

"Gulfleet, June, 3, 1869.

"I hereby agree with seven smacks of the port of Colchester to assist my ship the 'Rose' off the Gulfleet Sand into a port of safety for the sum of three hundred and ninety pounds, say £390, if not approved of by my owners to have it settled by reference.

"H. A., Master.

H. S. S., Mate.

O. L., smack 'Deerhound.'

J. P., smack 'Sea Lark.'

J. W., 'Beulah.'

J. T., 'Active.'

E. J., 'Lizzie Mordew.'

H. C., 'Scout.'

B. S., smack 'Increase.' "

11. The above-mentioned agreement having been come to, the plaintiffs all went to work in order to get the ship off. Some of them went to the pumps in order to get the water out of the ship, the crew being fatigued with their exertions. Others cast the remainder of her deck cargo overboard to lighten her, as it was impossible to get her off without doing so. One of the smacks (the "Lizzie Mordew") was brought as close as possible to the sand, and anchored in very shoal water, with 50 fathoms of cable out, and two of the ship's hawsers, bent one to the other, having a total length of 150 fathoms, were carried out and made fast to her. The brig's bower anchor, with 90 fathoms of chain attached, was also carried out by the plaintiffs in a south south-westerly direction. About an hour before the next time of high water, by means of heaving with the greatest possible force both upon the chain which had been carried out as before-mentioned, and upon the hawser which had been made fast to the smack, the windlasses of both vessels being made use of for the purpose, the plaintiffs succeeded, at about 6.30 p.m. on Thursday, the 3rd of June, in getting the ship off, and bringing her up at a clear berth from the sand. It was necessary, in

order to effect this, to slip the brig's anchor and 30 fathoms of chain, and also to cut the hawser from the "Rose" and "Lizzie Mordew," so that the head of the former vessel might be got in the right direction. Thirteen of the plaintiffs were left on board the brig for the purpose of working at her pumps and navigating her into a place of safety.

12. The "Rose" was got under weigh at 1 a.m. of Friday, the 4th June, and proceeded for the river. At high-water she was anchored midway between the Maplin and Mouse Lights, the wind still blowing strongly from the W.S.W. About 2 p.m. of the said 4th day of June, the "Rose" was got under weigh again, and at high-water came to anchor midway between Southend and the Chapman Head. At 2 a.m. on the 5th June, the "Rose" again proceeded to Gravesend Reach, where she was anchored about 10 a.m.

13. During all the preceding time the plaintiffs had attended to the pumps and assisted in navigating the ship. On her arrival in Gravesend Reach, finding that she had taken up, and therefore required less pumping, and her master having engaged a tug to tow her to London, the plaintiffs, with his consent, left the vessel, she being then in a place of safety.

14. One of the smacks (the "Scout") followed the "Rose" for the whole distance up to Gravesend, in order to take the plaintiffs out of the ship, and to render any assistance which might be required.

15. Had the "Rose" remained longer on the sand, it would have been impossible to get her off, as the tides were taking off, and she must have become a total wreck during the heavy weather which ensued, and all her cargo would have been lost.

16. By the aforesaid salvage services, the plaintiffs preserved the said vessel and her cargo from being so lost.

17. The "Deerhound" is a smack worth (with her tackle, &c.), between £500 and £600, and was manned with a crew of 6 hands. The "Sea Lark" is of about the same value, and was manned with a crew of 7 hands. The "Benlah" is worth about £500, and was manned with a crew of 6 hands. The "Active" is worth between £400 and £500, and was manned with a crew of 5 hands. The "Lizzie Mordew" is worth about £600, and was manned with a crew of 5 hands. The "Scout" is worth £400, and was manned with a crew of 7 hands; and the "Increase" is worth at least £600, and was manned with a crew of 6 hands.

18. The "Rose" is a brig of 252 tons register, and in her damaged condition was worth at least £550. Her cargo, including the freight thereon, in the damaged con-

dition in which it was salved was worth £1282. 5s., making a total value of £1832. 5s.

19. The plaintiffs submit that they are entitled to the sum of £390, mentioned in the aforesaid agreement, for their said services; and the defendants, the owners of the "Rose," are willing to pay their proportion thereof.

And the said L. and N. pray the Right Honourable the Judge to award to the plaintiffs, in respect of their said services, the sum of £390, pursuant to the said agreement, and to condemn the defendants, and their bail therein or otherwise, in such other sum as his Lordship may see fit to award to the plaintiffs for their said services, and to condemn the defendants, the owners of the cargo, now or lately laden on board the "Rose," in the plaintiffs' costs of these proceedings, and that further and otherwise, right and justice may be administered in the premises.

Dated the      day of

L. & N.

E. C. C.

*Notice of Tender on behalf of Defendants, the owners of Cargo.*

TAKE NOTICE, that I have this day paid to the credit of the Registrar of this Court, at the Bank of England, the sum of one hundred and forty-eight pounds eight shillings, which amount I tender to the plaintiffs on behalf of the owners of the cargo of the "Rose," in satisfaction of the services proceeded for in this cause by the said plaintiffs, so far as regards the said cargo, together with such costs (if any) as are due by law.

Dated the      day of

T. C.,

Solicitor for owners of cargo of "Rose."

To Messrs. L. & N.

*Rejection of Tender filed on behalf of the Plaintiffs.*

WE, L. & N., for the plaintiffs, hereby reject the tender made by Mr. C. on behalf of the owners of the cargo proceeded against in this suit, as insufficient.

L. & N.

Dated this

*Answer filed on behalf of Defendants, the owners of Cargo.*

T. C., solicitor for Messieurs L. G. B., of      ,  
merchants, and J. B., of      , in the city of

Londou, merchants, the owners of the cargo of the brig or vessel "Rose," some of the defendants, in answer to the petition filed in this cause, says as follows:—

1. At about 3 a.m. of the 2nd of June, 1869, the brig "Rose," of 253 tons register or thereabouts, laden with a cargo of battens, deals, and iron, in the prosecution of a voyage from Gefle to Londou, under all plain sail, suddenly came to the ground on the Gunfleet Sands, between the Upper and Lower Middle Buoys thereof.

2. The weather at this time was fine, but hazy, and the wind was blowing lightly from the west-south-west, the tide was flood, and the sea was smooth.

3. The sails of the "Rose" were then backed, and a kedge anchor, with a warp attached to it, was carried out from her, and attempts were made to get her afloat thereby, and these attempts were unsuccessful, and at 6 a.m. of the same day her master and crew put her long boat and spare spars overboard, and proceeded to shift a portion of her deck-load forward, and to make other preparations for heaving the "Rose" off.

4. On the ensuing flood tide, the master and crew of the "Rose" endeavoured, by means of the aforesaid kedge and warp, to heave her off, but she remained fast.

5. Some of the plaintiffs then came to the "Rose," and offered their assistance for the sum of £450, and refused to accept £150, which the master of the "Rose" offered to pay them.

6. The master and crew of the "Rose" then threw overboard her deck-load, with the exception of about 100 deals, which were kept forward; and upon the flood tide making on the morning of the following, the third day of said month, the master and crew of the "Rose" again endeavoured to heave the "Rose" afloat.

7. At about 9 a.m. of the same day the plaintiffs again offered their assistance to the "Rose," but refused to render any services whatever unless and until the master of the "Rose" made and entered into the agreement set out in the 10th article of the said petition.

8. After the plaintiffs had so as aforesaid induced the master of the "Rose" to sign the said agreement, two of the hawsers of the "Rose" were bent one to the other, and taken to one of the smacks of the plaintiffs, and there secured. After this, one of the bower anchors of the "Rose," with 90 fathoms of cable, was carried out and dropped in a south-westerly direction from the "Rose," and upon the flood tide making the windlasses of the "Rose" and of the aforesaid "Smack" were manued, and by means of the same, and of the aforesaid bower anchor, the "Rose" was shortly after 5 p.m. of the said 3rd day

of June hove afloat. The hawsers fast to the said smack were then cut, and the bower anchor of the "Rose" was slipped, together with about 30 fathoms of chain; and the "Rose" was got clear of the Gunfleet Sands, and brought up by another of her anchors at about 6 p.m. of the said day. A number of the plaintiffs and their smacks then left the "Rose."

9. Although the condition of the "Rose" was then such that her master and crew could alone have sailed her in safety to London, the plaintiffs induced the master of the "Rose" to allow 13 of their number to remain on board her.

10. The "Rose" remained at anchor until 1 a.m. of the 4th day of the said month, when the flood tide making, she weighed and made sail, and proceeded to work up for the river Thames. This the "Rose" continued doing until it became high water, when she anchored between the Maplin and Mouse Light vessels. Upon the flood tide again making on the same day, and which it did at about 2 p.m., the "Rose" was got under weigh, and again worked up for the river until high water, when she was anchored between Southend and the Chapman Head.

11. At about 2 a.m. of the 5th of the said month the "Rose" again got under way, and was worked up to Gravesend Reach, where she arrived at about 9 a.m. of said day. The "Rose" then anchored, and the aforesaid thirteen of the plaintiffs then left her.

12. The "Rose" was afterwards on the said day towed by a steam tug from Gravesend Reach to the Surrey Commercial Docks, for which towage of the "Rose," the sum of £5 has been paid.

13. During all the time aforesaid, the weather was fine with light prevailing winds from the southward and westward, and the tides were increasing.

14. No material damage was sustained by the "Rose," through having grounded as aforesaid.

15. The "Rose" while she lay aground on the Gunfleet Sand, and when she came off the same, and subsequently during her passage to Gravesend Reach, made but a very small quantity of water, which her own pumps worked by her own crew could have discharged from her.

16. The assistance, if any required by the "Rose" to have got her off from the Gunfleet Sand, could have been rendered by one of the smacks of the plaintiffs, and the crew thereof, but the plaintiffs, as they stated, in accordance with a rule existing among them, insisted on the employment of all the smacks and their crews then near.

17. At the time of the aforesaid services, the said brig "Rose" was of the value of £630, and the amount of

freight payable on account of the transportation of the said cargo was to wit the sum of about £200.

18. The cargo of the "Rose" was of the value of £1267.

19. The now pleading defendants submit that the said sum of £390 was and is an exorbitant sum for the plaintiffs to demand, and that the said agreement was not and is not under the circumstances above mentioned binding upon the said defendants.

20. Save as hereinbefore stated the allegations contained in the petition of the plaintiffs filed in this cause are untrue.

21. The now pleading defendants have legally tendered to the plaintiffs the sum of £148. 8s. for any services whatever which they may have rendered to the cargo of the "Rose."

And the said T. C. prays the Right Honourable the Judge to pronounce for the sufficiency of the aforesaid tender made by the owners of the cargo of the said brig "Rose," and to dismiss them from this suit, and to condemn the plaintiffs in costs, and that otherwise right and justice be done in the premises.

Dated the      day of .

T. C.

H. F. P.

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*Reply and Conclusion filed on behalf of the Plaintiffs.*

L. & N., solicitors for the plaintiffs, in reply to the answer of the defendants, the owners of the cargo, now or lately laden on board the ship or vessel "Rose," further say as follows :—

1. The statements contained in the said answer, so far as they differ from the allegations contain in the petition, are untrue.

And the said L. and N. pray the Right Honourable the Judge to pronounce against the tender made in this cause, and say that they do not plead further, and pray that the pleadings may be concluded.

Dated the      day of .

L. & N.

E. C. C.

## COUNTY COURT FORMS.

## No. 1.—Præcipe to Institute a Suit.

*Admiralty Jurisdiction.*In the County Court of  
holden at

I, L. M., attorney, hereby institute a suit for [state the nature of the suit] on behalf of [state name, address, and description of plaintiff] against [if the owner or owners be not known, state the owner or owners unknown of the property to which the suit relates, describing its name and nature and where it then is; if known, state name, address, and description of party proceeded against, the name and nature of the property to which the suit relates, and where it is,] in the sum of [state sum in letters] pounds. And I consent that all instruments and documents in the said suit may be left for me at [state address required by General Order No. 5], [add, where so desired, and I require the summons to be served by the bailiff of the court].

Dated the      day of      18 .

(To be signed by the party, his attorney or his clerk  
for him.)No. 2.—Præcipe for Permission for Suit to be heard  
at a Special Place.*Admiralty Jurisdiction.*In the County Court of  
holden at

(Title of Suit.)

I, X. Z., attorney, do pray that permission may be granted for the hearing of this suit (here state the name of the place at which and description of the building in which it is desired that the sitting should be held, and if the building is not one in which the county court ordinarily sits, add, and I undertake to hire the use of the said building at my expense, to be allowed as costs in the suit if the court shall allow thereof).

Dated this      day of      18 .

(To be signed by the party, his attorney or his clerk  
for him.)

## No. 6.—Notice of Sureties.

*Admiralty Jurisdiction.*In the County Court of  
holden at*(Title of Suit.)*

Take notice that the sureties whom I propose in the above suit are [here state the names and additions of the sureties, whether housekeepers or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any.]

Dated the      day of      18    .  
 To A. B. [the party in whose  
behalf the suit is instituted],  
 or C. D., the attorney of  
 A. B. [the, &c.]

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## No. 7.—Affidavit of Justification.

*Admiralty Jurisdiction.*In the County Court of  
holden at*(Title of Suit.)*

I [state name, address, and description], one of the proposed sureties in this suit, make oath and say, that I am worth more than the sum of [state the sum in letters in which bail is to be given] pounds after the payment of all my debts.

On the      day of      18    , the said  
 was duly sworn to the truth of this affidavit, at  
 Before me

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## No. 8.—Bail Bond.

*Admiralty Jurisdiction.*In the County Court of  
holden at*(Title of Suit.)*

Whereas a suit for      has been instituted in this court on behalf of A. B. of      against      .

Now therefore we [state names, addresses, and description of sureties], jointly and severally submit ourselves to the jurisdiction of the said court, and consent that if he [or they], the said      shall not pay what may be adjudged against him [or them] in the said suit, with costs, execution may issue forth against us, our heirs,

executors, and administrators, our goods and chattels, for a sum not exceeding [state sum in letters] pounds.

(Signatures of sureties.)

The bail bond was signed by the said and the sureties, the day of 18  
Before me,

Registrar of the Court,  
or one of his clerks.

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### No. 10.—Præcipe to enter an Appearance.

*Admiralty Jurisdiction.*

In the County Court of  
holden at

(Title of Suit.)

I, R. S., attorney, hereby enter an appearance on behalf [state name, address, and description of party], in the suit for [state nature of suit] which has been instituted in this court on behalf of [state, name, address, and description of plaintiff], against [state against whom the suit is instituted]. And I consent that all instruments and documents in the suit may be left for me at [state address required by General Order, No. 11].

Dated the day of .

(To be signed by the defendant, his attorney, or his clerk for him.)

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### No. 15.—Præcipe for a Warrant of Execution.

*Admiralty Jurisdiction.*

[Seal.]

In the County Court of  
holden at

(Title of Suit.)

I, S. R., attorney, do require a warrant of execution to issue against the goods of C. D., of , who was ordered by decree of this Court of the day of 18 , to pay to the plaintiff or myself, as his attorney, the sum of pounds for [here insert for what the sum was ordered to be paid], and who has not paid the said sum as so ordered.

Dated the day of 18 .

(Signature of attorney.)

## No. 18.—Præcipe for paying in Money.

*Admiralty Jurisdiction.*In the County Court of  
holden at

(Title of Suit.)

I, A. B., of        do pay the sum of [state sum in  
letters] pounds into Court in this suit at the request and  
by the authority of       , he having agreed to pay [or  
tender] the same in settlement of the claim of the plaintiff  
[or as the case may be].

Dated the        day of        18 .

(To be signed by the party, his attorney, or his clerk  
for him.)

## FEES

TO BE TAKEN IN THE HIGH COURT OF ADMIRALTY OF  
ENGLAND, BY THE OFFICERS AND PRACTITIONERS  
THEREIN.

## SCHEDULE I.

*Fees to be taken by the Officers, and to be collected by means  
of Admiralty Court Stamps.*

*In the Registry.*

		£ s. d.
1.	On every præcipe . . . . .	0 5 0
2.	“ warrant or citation . . . . .	0 10 0
3.	“ detainer . . . . .	1 0 0
4.	“ release . . . . .	0 10 0
5.	“ commission, monition, decree, re- quisition, attachment, or other instrument for which a fee is not specially provided . . . . .	1 0 0
6.	“ bail bond . . . . .	0 7 6
7.	“ affidavit of justification . . . . .	0 2 6
8.	“ subpœna . . . . .	0 10 0
9.	“ minute, including the entry of the order, if any . . . . .	0 5 0
10.	“ summons, including the entry of the judge's or Registrar's order . . . . .	0 10 0
11.	“ notice of sale, or notice of proceed- ings in a cause of possession . . . . .	0 10 0
12.	“ notice of motion, including the en- try of the judge's order . . . . .	0 10 0
13.	“ notice to have a cause placed on the list for hearing, including the entry of judge's order if the cause be by default . . . . .	0 10 0
14.	“ ditto, ditto, if the cause be contested . . . . .	2 0 0
15.	“ notice to have a reference placed on the list for hearing . . . . .	0 10 0
16.	On writing for the attendaunce of Trinity masters at the hearing of any cause . . . . .	0 10 0
17.	On the examination of any witnesses vivâ voce, either in court or before the Regis- trar . . . . .	0 10 0

	£	s.	d.
18. On administering an oath for each deponent .	0	1	0
19. On affixing the seal of the court to any instrument or parchment . . . .	0	2	6
20. Ditto, ditto, to any other document . . . .	0	1	0
21. On every pleading, conclusion, proof, notice, agreement, or other document, on the same being filed, save an exhibit, or any instrument, or document, previously issued from the registry or the marshal's office . . . .	0	5	0
22. On every exhibit, including the marking thereof . . . . .	0	1	0
23. For every office copy of a document in the English language, per sheet, not exceeding ten folios, including the Registrar's signature . . . . .	0	5	0
24. If required to be collated in the Registry, per sheet, not exceeding ten folios, in addition to the above . . . . .	0	2	6
25. For office copies of papers in a foreign language, or of shorthand writers' or reporters' notes, or of abstracts or translations made in the Registry, in addition to the above fees, the charge of the copyist, shorthand writer, reporter, or translator . . . . .			
26. On collating original documents with the proof sheets of printed matter, if done with a clerk or clerks of the proctor or proctors, per sheet demy of printed matter, whether of four pages of folio, or eight pages quarto	0	10	0
27. If done wholly in the Registry, per sheet demy . . . . .	1	0	0
28. On a reference to the Registrar . . . . .	5	5	0
29. If the attendance of one or two merchants is required, to each merchant . . . . .	5	5	0
30. In cases of great intricacy, and large amount, the Registrar, and to each merchant . . . . .	10	0	0
31. When the accounts to be investigated do not amount to 300 <i>l.</i> , to the Registrar and to each merchant . . . . .	2	2	0
		to	
	5	5	0
32. When the accounts to be investigated do not amount to 100 <i>l.</i> , to the Registrar and to each merchant . . . . .	1	1	0
		to	
	3	3	0
33. On drawing the report and schedule in cases in which the claim exceeds 100 <i>l.</i> . . . . .	1	0	0
34. Ditto, ditto, where the claim does not exceed 100 <i>l.</i> . . . . .	0	10	0
35. On taxing any bill of costs, per sheet, not exceeding ten folios, from each party to the taxation . . . . .	0	5	0

	£ s. d.
36. On taxing any bill of costs, per sheet not exceeding ten folios, if but one party attests the taxation . . . . .	0 10 0
37. On a receivable order . . . . .	0 2 6
38. On a receipt for money or for papers . . . . .	0 2 6
39. On every order for payment of money out of the Registry . . . . .	0 5 0
40. Poundage on moneys paid out of the Registry in any cause, if the sum does not exceed 50 <i>l.</i> . . . . .	0 5 0
41. Ditto, ditto, if it exceeds 50 <i>l.</i> , but does not exceed 100 <i>l.</i> . . . . .	0 10 0
42. Ditto, ditto, if it exceeds 100 <i>l.</i> , but does not exceed 200 <i>l.</i> . . . . .	1 0 0
43. For every additional 100 <i>l.</i> . . . . .	0 10 0
44. No poundage is payable on the transfer of money from the Registry to the naval prize account, or on transmitting it to the Court of Appeal in pursuance of a monition.	
45. From a person who is not a party in the cause, nor his proctor, nor the clerk of the proctor, on examining the court books in respect of any cause . . . . .	0 1 0
46. On examining the documents in a cause in which no proceedings are pending, and which has been terminated within the last two years . . . . .	0 2 6
47. Ditto, ditto, if beyond that period . . . . .	0 5 0
48. Attendance at the bank to receive dividends, transfer, sell, or purchase stock or exchequer bills, or convert bills of exchange for suitors . . . . .	1 0 0
49. Attendance of a clerk out of the profession, or in any court of law or equity, besides the expenses of travelling, for every day . . . . .	1 0 0
50. On every appointment of a standing commissioner to take bail . . . . .	5 0 0
51. On every appointment of a standing commissioner to administer oaths in Admiralty . . . . .	1 0 0
52. On filing a claim for repayment of the excess of wages paid to a substitute hired in the place of a volunteer into the Royal Navy, including copy sent to the Admiralty . . . . .	0 10 0
53. On the opinion of the Registrar objecting to the claim . . . . .	0 10 0
54. On certificate ordering payment of amount due, including the copy to be sent to the Accountant-General of the Navy . . . . .	0 10 0
55. On registering power of attorney for a Queen's	

	£ s. d.
ship generally, and copy thereof for Somerset House . . . . .	1 1 0
56. On registering ditto, specially . . . . .	0 10 0
57. Poundage on monies paid to the Naval Prize Account, the same as on payment of monies out of the Registry in causes.	
58. On taxing accounts in naval prize matters, the same as on taxing bills in causes.	
59. On writing letters in regard to naval prize matters . . . . .	0 10 0
60. On letters patent to a vice-admiral, or judge of a Vice-Admiralty Court, issued under seal of the court, besides the stamp duty, if any . . . . .	2 10 0
61. Ditto, ditto, to an advocate, Registrar, or marshal of a Vice-Admiralty Court, besides the stamp duty, if any . . . . .	2 10 0
62. On every appointment of a coroner . . . . .	2 0 0

*In the Marshal's Office.*

63. On every praecipe . . . . .	0 5 0
64. On the execution of every warrant . . . . .	2 0 0
65. On the execution of every citation <i>in rem</i> . . . . .	0 10 0
66. On the execution of every attachment, for every person attached . . . . .	1 0 0
67. On the execution of every decree or commission of unlivery, appraisement, or sale . . . . .	1 0 0
68. On the execution of any other instrument for which a fee is not specially provided . . . . .	1 0 0
69. On attending, appointing, and swearing appraisers . . . . .	1 0 0
70. On delivering up ship or goods to the pur-chaser, agreeably to the inventory . . . . .	1 0 0
71. On attending the unlivery of the cargo, or sale of ship or goods, per day . . . . .	2 0 0
72. On retaining possession of a ship, or of a ship and goods, to include the cost of a ship-keeper, if required, per day . . . . .	0 5 0
73. On every report as to the sufficiency of sureties . . . . .	0 10 0
74. If the marshal, or any of his substitutes is required to go a greater distance than five miles from his office, to perform any of the above duties, he will be entitled to his reasonable expenses for travelling, board and maintenance.	
75. Poundage on the proceeds of any vessel or goods sold under the decree of the court, if the same do not exceed 50 <i>l.</i> . . . . .	0 10 0

	£ s. d.
76. Exceeding 50 <i>l.</i> but not exceeding 100 <i>l.</i> . . . . .	1 0 0
77. For every additional 100 <i>l.</i> or part thereof . . . . .	1 0 0

## SCHEDULE II.

*Fees to be taken by Examiners and Commissioners for their own use.*

1. For examining witnesses <i>vivæ voce</i> , on a pleading, according to the length of time occupied, per day . . . . .	$\left\{ \begin{array}{l} 2 \ 2 \ 0 \\ \text{to} \\ 4 \ 4 \ 0 \end{array} \right.$
2. If the examination takes place at a greater distance than three miles from the General Post Office, London, the examiner or commissioner will be entitled, in addition, to his proper and reasonable expenses for travelling, board, and maintenance	
3. For drawing and engrossing a return of the witnesses to be examined in London . . . . .	1 1 0
4. Ditto, ditto, of the witnesses examined under a commission . . . . .	1 1 0
5. On taking bail, whether under a standing or special commission . . . . .	1 1 0

## SCHEDULE III.

*Fees to be taken by Practitioners for their own use.*  
*Attendances.*

1. Attendance in the Registry, filling up and leaving præcipe . . . . .	0 6 8
2. Subsequent attendance on obtaining an instrument for which the præcipe was required, including the getting of the seal of the court affixed . . . . .	0 6 8
3. Attendance in the Registry, filing any document or instrument . . . . .	0 6 8
4. Attendance in the Registry, filing notice of motion . . . . .	0 6 8
5. Attendance in the Registry, procuring a cause to be set down in the list for hearing . . . . .	0 6 8
6. Attendance in the marshal's office, filling up præcipe, and leaving with him any instrument required to be served by him . . . . .	0 6 8
7. Attendance on counsel, leaving with him a case, pleading or brief, and paying him his fee thereon, if the fee do not exceed one guinea . . . . .	0 3 4
8. If above one guinea, but not exceeding five guineas . . . . .	0 6 8

	£ s. d.
9. If above five guineas, but not exceeding ten guineas . . . . .	0 13 4
10. And for every additional ten guineas, or part thereof . . . . .	0 6 8
11. Attendance at a conference . . . . .	0 6 8
12. Ditto, at a consultation . . . . .	0 13 4
13. Attendance, serving notice or summons on adverse proctor, including copy of such notice or summons . . . . .	0 6 8
14. Attendance on adverse proctor, serving him with any copies of pleadings or affidavits . . . . .	0 6 8
15. Attendance at the office of a public journal, procuring the insertion of an advertisement . . . . .	0 6 8
16. Attendance before the judge in chambers, on a motion or summons . . . . .	0 6 8
17. Attendance on a motion in court . . . . .	0 13 4
18. Attendance in court at the hearing of a cause, according to the time occupied, per day . . . . .	$\left\{ \begin{array}{l} 1 \ 1 \ 0 \\ \text{to} \\ 2 \ 2 \ 0 \end{array} \right.$
19. If the cause be by default . . . . .	0 13 4
20. Attendance upon a witness, taking instructions for his examination . . . . .	0 6 8
21. Attendance at the examination of witnesses, where the proctor is assisted by counsel, according to the time occupied, per day . . . . .	$\left\{ \begin{array}{l} 1 \ 1 \ 0 \\ \text{to} \\ 2 \ 2 \ 0 \end{array} \right.$
22. Ditto, ditto, where the examination is conducted by the proctor alone, according to the time occupied, per day . . . . .	$\left\{ \begin{array}{l} 1 \ 1 \ 0 \\ \text{to} \\ 4 \ 4 \ 0 \end{array} \right.$
23. If required to go beyond three miles from the General Post Office, to attend the examination of witnesses, the reasonable expenses of travelling, board, and maintenance, will be allowed in addition.	
24. Attendance before the Registrar, or before the Registrar and merchants, on a reference, according to the time occupied, per day . . . . .	$\left\{ \begin{array}{l} 1 \ 1 \ 0 \\ \text{to} \\ 4 \ 4 \ 0 \end{array} \right.$
25. If counsel attend the hearing of the reference . . . . .	$\left\{ \begin{array}{l} 1 \ 1 \ 0 \\ \text{to} \\ 2 \ 2 \ 0 \end{array} \right.$
26. Where the accounts to be investigated do not exceed 300 <i>l.</i> , a smaller fee shall be allowed at the discretion of the Registrar.	
27. Attendance on taxing a bill of costs, per sheet, not exceeding ten folios . . . . .	0 3 4
28. All other necessary attendances, either before the judge in chambers, before the Registrar or a commissioner, or upon the	

	£ s. d.
adverse party or proctor, and for which a fee has not been specially provided . . .	0 6 8

*Instructions.*

29. Instructions for any petition or answer . . .	0 13 4
30. Instructions for any reply, rejoinder, or subsequent pleading . . . . .	0 6 8
31. Instructions for any special affidavit . . . .	0 6 8

*Pleadings and Affidavits.*

32. Drawing any petition, or answer, if not exceeding twenty folios . . . . .	1 0 0
33. If exceeding twenty folios, for every additional folio . . . . .	0 1 0
34. Drawing any reply or subsequent pleading, if not exceeding ten folios . . . . .	0 10 0
35. If exceeding ten folios, for every additional folio . . . . .	0 1 0
36. Drawing and engrossing the conclusion . . . . .	0 6 8
37. Drawing any affidavit, if not exceeding five folios . . . . .	0 5 0
38. If exceeding five folios, for every additional folio . . . . .	0 1 0
39. Drawing, engrossing, and swearing any affidavit in verification of the service of any summons, notice, &c., besides the fee paid on being sworn . . . . .	0 2 6
40. Drawing any notice of motion . . . . .	0 10 0
41. Drawing any brief, case for hearing, bill of costs, or other document not before specified, per folio . . . . .	0 1 0
42. Perusing and abstracting any pleading, affidavit, or other document filed in the cause, per folio . . . . .	0 0 4

*Copies.*

43. Engrossed copies of every pleading, affidavit or other proof, and of any document to be filed and left in the registry, including the carefully collating the same, per folio . . . . .	0 0 6
44. Every other copy of any document, per folio . . . . .	0 0 4
45. Collating any copy, per folio . . . . .	0 0 2
46. Correcting the press, per sheet demy, whether of four pages folio, or eight pages quarto . . . . .	0 10 0

*Letters, Messengers, &c.*

47. Every necessary letter during the dependence of the cause . . . . .	0 3 6
N.B. No fee to be allowed for perusing letters.	

	£ s. d.
48. Term fee, for letters, messengers, &c., during each term in which any business is done .	0 15 0

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## SCHEDULE IV.

*Fees to be taken by the Practitioners, for the use of other Persons.*

*Counsels' Clerks.*

Not to exceed as under :

Upon a fee to counsel under 5 guineas . . . . .	0 2 6
5 guineas and under 10 guineas . . . . .	0 5 0
10 guineas and under 20 guineas . . . . .	0 10 0
20 guineas and under 30 guineas . . . . .	0 15 0
30 guineas and under 50 guineas . . . . .	1 0 0
50 guineas and upwards, for every guinea paid . . . . .	0 0 6
On consultations :	
Senior's clerk . . . . .	0 7 6
Junior's clerk . . . . .	0 2 6
On general retainer . . . . .	0 10 6
On common retainer . . . . .	0 2 6
On conference . . . . .	0 2 6

*Witnesses' Expenses.*

Allowance to witnesses, including their board and lodging, as between party and party :

Common witnesses, as labourers, journeymen, sailors, &c., &c.

If required to come a distance not exceeding five miles, per diem .	0 5 0
If a greater distance, per diem .	0 7 6

Master tradesmen, yeomen, farmers, masters and mates of vessels, &c.

If required to come a distance not exceeding five miles, per diem .	0 10 0
Bankers, merchants, professional men, notaries, engineers, and surveyors, auctioneers, and accountants, &c., &c., per diem .	1 1 0 to 3 3 0

Clerks to bankers, merchants, professional men, and others :

If required to come a distance not exceeding five miles, per diem .	0 10 6
If a greater distance, per diem .	1 1 0
Esquires and gentlemen, per diem .	1 1 0

	£ s. d.
Females according to station in life :	
If required to come a distance not exceeding five miles, per diem .	{ 0 5 0 to { 0 10 0
If a greater distance, per diem .	{ 0 7 6 to { 1 0 0

The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid; but in no case shall there be an allowance for such expenses, of more than 1s. per mile one way.

*Printing.*

Not to exceed as under:

Per sheet demy, whether of four pages folio, or eight pages quarto	2 2 0
Extra for table work, per page folio, or two pages quarto . . . . .	0 5 0
If in pica type . . . . .	0 7 6
If in small pica . . . . .	0 10 6

Where pica or small pica can be used for table work, a smaller type shall not be allowed on taxation.

The paper employed for the printing shall be fine demy, weighing not less than 24lbs. to the ream; and the prices mentioned above shall include all charges for printing, paper, folding, and stitching.

No charge shall be allowed on taxation for corrections.

## COUNTY COURT FEES.

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### SCHEDULE I.

*Fees to be taken in County Courts having Admiralty Jurisdiction.*

Fees to be taken by Registrar and accounted for and paid over to the Treasurer.	On every institution of a suit six-pence in the pound, and on hearing of the same an additional fee of sixpence in the pound on the amount claimed, where it does not exceed fifty pounds; and where it does exceed fifty pounds, then five shillings additional on the institution, and on the hearing of the suit for every fifty or fraction of fifty pounds claimed over and above the first fifty pounds. Where the Court is to be held beyond three miles from the Registrar's office, then an additional fee of one shilling for each mile from the office to the place of sitting.
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Fees to be taken by the Registrar for his own use.	Where the Amount claimed		
	does not exceed £20.	exceeds £20 and does not exceed £100.	exceeds £100.
On every institution of suit, and summons thereon . . .	£ s. d.	£ s. d.	£ s. d.
,, warrant of arrest . . .	0 2 6	0 5 0	0 7 6
,, of a vessel . . .	0 2 6	0 5 0	0 7 6
,, release . . .	0 2 6	0 5 0	0 7 6

Fees to be taken by the Registrar for his own use.	Where the Amount claimed		
	does not exceed £20.	exceeds £20 and does not exceed £100.	exceeds £100.
	£ s. d.	£ s. d.	£ s. d.
On every bail bond . . .	0 2 6	0 5 0	0 7 6
,, affidavit of justification . . .	0 1 0	0 2 6	0 2 6
,, subpoena . . .	0 1 0	0 2 0	0 3 0
,, notice of hearing . each	0 1 0	0 1 6	0 2 6
Summons for the attendance of assessor at the hearing of any suit, each	0 0 6	0 1 6	0 2 6
For every order of transfer	0 5 0	0 10 0	0 15 0
Where a court is to be held specially for the hearing of a suit under Rule 3 .	0 15 0	1 5 0	1 15 0
Where the court is to sit for the hearing or part hearing of a suit beyond three miles from Registrar's office, then in addition . . . .	0 15 0	0 15 0	0 15 0
Mileage one way from office to place of sitting, for each mile . . . .	0 0 6	0 0 6	0 0 6
When the Registrar cannot return the same night .	1 1 0	1 1 0	1 1 0
For drawing final decree .	0 7 6	0 10 0	0 15 0
For filing an affidavit or other document, not being a document annexed to an affidavit .	0 0 6	0 1 0	0 1 0
For every office copy of a document in the English language . per folio	0 0 4	0 0 4	0 0 4
For office copies of papers in a foreign language, or of shorthand writers' or reporters' notes, or of abstracts or translations made in the office, in addition to the above fees, the charges of the copy-			

Fees to be taken by the Registrar for his own use.	Where the Amount claimed		
	does not exceed £20.	exceeds £20 and does not exceed £100.	exceeds £100.
	£ s. d.	£ s. d.	£ s. d.
ist, shorthand writer, reporter, or translator .	—	—	—
On a receipt for money or for papers, ( <i>only one fee to be taken however many may be the papers delivered in at one time</i> ) .	0 0 6	0 1 0	0 1 0
Poundage on monies paid out of the office in any suit for every 50 <i>l.</i> or fraction thereof . . .	0 2 0	0 5 0	0 5 0
From a person who is not a party in the suit, nor his attorney, nor the clerk of the attorney, on examining the court books in respect of any suit . . . . .	0 1 0	0 1 0	0 1 0
For every summons of commitment . . . . .	0 1 6	0 3 0	0 5 0
For every warrant against the body or goods or order of sale of vessel . .	0 2 6	0 5 0	0 7 6
For making or transmitting note of any decree or order under Rule 33 .	0 1 6	0 2 6	0 3 6
On examining the documents in a suit in which no proceedings are pending, and which has been terminated within the last two years . . . .	0 1 6	0 2 6	0 2 6
Ditto ditto if beyond that period . . .	0 2 0	0 3 6	0 3 6
For every sitting in which the Registrar is employed as an examiner .	—	0 7 0	0 10 0
When the sitting is longer than one hour, then for every			

Fees to be taken by the Registrar for his own use.	Where the Amount claimed		
	does not exceed £20.	exceeds £20 and does not exceed £100.	exceeds £100.
	£ s. d.	£ s. d.	£ s. d.
additional hour or part of an hour . Where the Registrar shall be required to attend elsewhere than at the court or office, in addition to the above . .	—	0 5 0	0 7 0
Mileage one way from the office to place of examination, for each mile . . .	—	0 10 0	1 0 0
For taxation of costs . . .	—	0 0 6	0 0 6
—	—	0 5 0	0 7 0
Fees to be taken for the use of the High Bailiff.			
For service of summons or subpoena, if served within three miles of Registrar's office . . . .	0 3 6	0 5 0	0 5 0
If served beyond three miles of Registrar's office, reasonable expenses for travelling and maintenance . . . .	—	—	—
Attendance on court if required by Judge, where court is to be held specially for the hearing of a suit under Rule 3 . . . .	0 5 0	0 10 0	0 15 0
On execution of a warrant of arrest of a vessel or property . . . .	0 10 0	0 15 0	1 0 0
On keeping possession of a vessel or property to include the cost of a vessel keeper, if required, per day . . . . .	0 3 6	0 5 0	0 5 0

Fees to be taken for the use of the High Bailiff.	Where the Amount claimed		
	does not exceed £20.	exceeds £20 and does not exceed £100.	exceeds £100.
	£ s. d.	£ s. d.	£ s. d.
If execution had at a greater distance than three miles from Registrar's office, reasonable expenses for travelling and maintenance . . .	—	—	—
On sale of vessel or pro- perty, including inven- tory, for every 50 <i>l.</i> or fraction thereof . . .	0 10 0	0 10 0	0 10 0
For service of summons of commitment . . .	0 2 0	0 5 0	0 10 0
Execution of warrant against body or goods . .	0 10 0	1 0 0	1 10 0
Conveyance to gaol, per mile . . . .	0 0 9	0 1 0	0 1 6

To the appraiser for ap-  
praisement of a vessel,  
including inventory.

Ten shillings per cent. on  
the appraised value of the  
property, with reasonable  
expenses for travelling and  
maintenance if the vessel  
is beyond three miles from  
Registrar's office.

## SCHEDULE II.

*Costs and Charges to be paid to Counsel and Attorneys-at-Law under the County Courts Admiralty Jurisdiction Act, 1868, between Party and Party.*

—	Lower Scale, not exceeding £100.	Higher Scale, above £100.
	£ s. d.	£ s. d.
Instructions to sue or defend . . .	0 10 0	0 15 0
Application for substituted service . .	0 4 0	0 6 0
Attendance on the Registrar, filling up and leaving praecipe, and obtaining the document or instrument for which the praecipe was required, including the getting the seal of the Court affixed . . . .	0 6 8	0 10 0
Serving any notice or summons on a party or his attorney, including copy thereof . . . .	0 3 6	0 5 0
If served beyond three miles of Registrar's office, reasonable expenses for travelling and maintenance . .	—	—
Examining and taking minutes of evidence of each witness afterwards allowed by the Judge (whether counsel employed or not) . . .	0 3 4	0 6 8
If above six folios, for every additional folio . . . .	0 1 0	0 1 0
Drawing brief, per folio . . . .	0 1 0	0 1 0
Copy brief, per folio, and necessary documents to accompany same . .	0 0 4	0 0 4
Attending counsel therewith . .	0 3 4	0 3 4
Fee to counsel and clerk, sum paid not exceeding . . . .	3 5 6	5 10 0
If conference with counsel allowed, appointing it and attending counsel . .	0 10 0	0 13 4
Fee to counsel and clerk on conference . . . .	1 6 0	1 6 0
Attending Court on trial, with counsel . . . .	0 13 4	1 1 0
Attending Court and conducting suit, where no counsel employed . .	1 10 0	2 2 0
Where judgment is deferred, attending Court to hear it . . . .	0 6 8	0 6 8

		Lower Scale, not exceed- ing £100.	Higher Scale, above £100.
		£ s. d.	£ s. d.
<b>Witnesses' expenses, according to scale in force . . . . .</b>			
<i>Occasional Costs.</i>			
Lodging order of transfer . . . . .	0 10 0	0 16 8	
Notice of application for a new trial, or to set aside proceedings, including copies of duplicate originals and service, and attending Registrar of the Court therewith, such notices and copies being signed by the attorney . . . . .	0 6 8	0 13 4	
Any attendance which the Registrar may think was necessary . . . . .	0 3 4	0 6 8	
All necessary affidavits, not exceeding five folios; including filing, each . . . . .	0 5 0	0 5 0	
For every additional folio . . . . .	0 1 0	0 1 0	
Oath (sum paid) . . . . .	—	—	
Attending Court to support or oppose any application or motion without counsel . . . . .	1 1 0	1 1 0	
Attending in the last-mentioned cases with counsel . . . . .	0 15 0	0 15 0	
Fee to counsel and clerk not exceeding . . . . .	1 3 6	2 4 6	
Attorney's travelling expenses to attend Court or an examiner, where the place of sitting in either case is beyond three miles of the Registrar's office, one way, per mile . . . . .	0 0 6	0 0 6	
Where, in the opinion of the Registrar, he cannot return the same night, in addition to the above mileage . . . . .	1 11 6	1 11 6	
Any attendance on an examiner, which the Registrar may, upon taxation, think was necessary . . . . .	0 5 0	0 7 0	
When the attendance is longer than one hour, then for every additional hour or part of an hour . . . . .	0 4 0	0 6 0	
Drawing all necessary documents, per folio . . . . .	0 1 0	0 1 0	
Plans and charts to be allowed by special order of Judge, not exceeding . . . . .	2 2 0	3 3 0	

—	Lower Scale, not exceed- ing £100.	Higher Scale, above £100.
Attending taxing costs . . .	£ s. d. 0 5 0	£ s. d. 0 7 0
All necessary copies, per folio . . .	0 0 4	0 0 4
Letters and messages ( <i>to be allowed once in the suit only</i> ) . . .	0 5 0	0 10 0
<b>COSTS OF THE DAY ON ADJOURNMENT.</b>		
Attending Court where no counsel em- ployed . . . . .	0 15 0	1 0 0
Attending with counsel . . . . .	0 10 0	0 15 0
Refresher fee to counsel and clerk, not exceeding . . . . .	1 3 6	2 4 6
Witnesses' expenses same as on trial.		
<b>COSTS OF APPEAL.</b>		
Preparing notice of appeal, including copies and service . . . . .	0 7 0	0 10 0
Application to stay proceedings . . . . .	0 7 0	0 10 0
Transmitting case and copies, includ- ing notice to successful party . . . . .	0 5 0	0 7 0
Application to Judge for leave to pro- ceed on judgment . . . . .	0 5 0	0 7 0
Depositing decree or order of Court of Appeal . . . . .	0 3 0	0 4 0

N.B.—The Registrar is to tax the bills of costs of defendants upon the lower scale when the suit is for a sum not exceeding 100*l.*, and upon the higher when it exceeds 100*l.*; and the bills of costs of plaintiffs upon the lower scale when the sum recovered does not exceed 100*l.*, and upon the higher when it exceeds 100*l.*, unless in either case the Judge shall otherwise order.

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COSTS BETWEEN ATTORNEY AND CLIENT shall be allowed on the above scale, with such additions thereto as the Registrar may on consideration of special circumstances think fit to follow.

IN SUITS ENTERED IN THE COURT BY AGREEMENT OF PARTIES under paragraph 4 of section 3 of the County Courts Admiralty Jurisdiction Act, 1868, the costs shall be

allowed on the scale of costs allowed in the High Court of Admiralty if the attorneys shall agree in the memorandum that they shall be so allowed, and if no such agreement shall be made, then according to the County Court Admiralty scale as between attorney and client.

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HATHERLEY, C.

R. PHILLIMORE, Judge of the High Court  
of Admiralty.

JAMES STANSFELD, Jr. Commissioner of  
the Treasury.

LANSDOWNE,                  Do.                  Do.

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